



Negotiating Matrimony: Marriage, Divorce, and Property Allocation Practices in Istanbul, 1755-1840

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**NEGOTIATING MATRIMONY: MARRIAGE, DIVORCE, AND PROPERTY
ALLOCATION PRACTICES IN ISTANBUL, 1755-1840**

A dissertation presented

by

LEYLA KAYHAN ELBIRLIK

to

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Negotiating Matrimony: Marriage, Divorce, and Property Allocation Practices in Istanbul, 1755-1840

Abstract

This dissertation studies the construction of the marital bond and its dissolution with respect to the normative stipulations of the *sharīʿa*, social and moral constructions, and the cultural formations during late-eighteenth and early–nineteenth-century Istanbul. Through the examination of court cases, estate inventories, and contemporary chronicles, I demonstrate the strategies and practices that perpetrated possible patterns in the matrimonial union. Although Islamic law allowed for and encouraged the spouses to reconcile marriage-related negotiations outside of court, the amount of registered marital disputes indicates the central role of the court for spouses in establishing conciliatory grounds. This study explores in particular the consensual and purposeful use of the *sharīʿa* courts by women. The examination of the *sicils* from three different courts in *intra muros* Istanbul has shown that women were adamant about formalizing the consequence of marriage, divorce and property related discordances in hoping to secure their future interests.

The dissertation essentially introduces the largely overlooked issue of the specialization of courts in this period and presents specifically the Dāvud Pasha court's concentration on marriage and family-related disputes. By focusing on local practices and particularities through a case-by-case methodology, the study delivers a portrayal of Ottoman urban marriage structure within the context of the socio-legal and economic

dynamics of the period. Given that the formal registry of marriage contracts and divorce settlements was not legally enforced until the early twentieth century, the extensive practice of registration in court could be interpreted as the preliminary steps to the formalization and codification of the marital union. I offer a likely reading of women's experiences with respect to marriage and property ownership suggesting that the predominant marriage pattern observed in the segment of the population that used the court was companionate.

By analyzing quantitative data and archival material, I demonstrate women's visibility in the public sphere through their significantly increased use of courts, proactive utilization of social networks, and strategic activities vis-à-vis marriage and divorce to depict a portrayal of the late eighteenth-century Istanbul family.

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NOTE ON TRANSLITERATION AND TRANSLATION

For terms in Ottoman Turkish rendered in the Arabic script, the system adopted by the monograph *Şer‘iyye sicilllerine göre İstanbul tarihi: İstanbul Mahkemesi 121 numaralı şer‘iyye sicili: 1231-1232/1816-1817*¹ was employed. The following marks were used to indicate hamza (‘) and ‘ayn (‘), such as in sā‘ir and sharī‘a. The same transliteration system was used for personal names and place names. Terms of Arabic or Persian origin that are often used in English were spelled according to their usage in the Oxford Dictionary of English (e.g. gurush, kadi, fetva, imam). Except for the commonly used terms *kadi* and *sicil*, all terms are italicized. All translations are the author’s unless otherwise noted.

¹ For a full citation, see the *Works Cited* section.

INTRODUCTION

“The facility of divorce remedies, to some small extent, the unfortunate consequences of marriages made almost always in the dark on account of the peculiar conditions of Turkish society, which oblige the two sexes to live entirely apart. It requires very little to enable a woman to obtain a divorce: it is only necessary to show that her husband has ill-treated her once, or spoken of her in conversation with others in offensive terms, or neglected her for a certain length of time. When she has a complaint to make, she has only to lay her grievance before the court in writing, or she may, if she chooses, present it in person before a vizier—the grand vizier himself, if she wishes to—he being almost always ready to receive and listen to her kindly and patiently.”

*Edmondo de Amicis*¹

Lawrence Stone, one of the pioneers of family history, once said that the basic moral and cultural values of any society are revealed in its attitude towards the disintegration of the institution of marriage.² It is for this precise reason that my interest in the Ottoman family has evolved into writing a social history of marriage and divorce in a period that has been, surprisingly, overlooked. This dissertation studies the way husbands and wives experienced and negotiated the marital union and its dissolution with respect to the normative principles of the *sharīʿa*, social and moral constructions, and the customary and cultural patterns during late-eighteenth and early–nineteenth-century Istanbul. My exploration of marriage, divorce, and property allocation patterns during that time has four main objectives. The first and principal one elucidates the importance of the agency and autonomy of women seeking justice and defending their rights in court and their

¹ Edmondo de Amicis, *Constantinople*, vol. II, Maria Hornor Landsdale, trans. (Philadelphia: Henry T. Coates & Co., 1896), 37.

² Lawrence Stone, *Road to Divorce - England 1530-1987* (Oxford: Oxford University Press, 1990).

applications of strategies to circumvent certain laws regarding matrimony. The second traces and contextualizes the existence of what appears to be a more specialized and sophisticated court system in the period under scrutiny. My third objective addresses a blatant gap in the history of the Ottoman family. Drawing on the court records and estate registers of Istanbul, this study focuses in depth on a wide range of matrimony related cases in order to create a collage that depicts a portrait of the family in the capital city of the empire. My last, and perhaps most challenging objective attempts to comprehend the mentality of ordinary people in the past mainly to envision their life patterns and interlace their stories to create an alternative perspective to our current understanding of eighteenth-century Ottoman society.

This study is ultimately a “thick description” of the Ottoman family of Istanbul explicating the dynamics of urban life that reflected the complex and multifarious social and cultural setting in which they were shaped.³ The history of the family in the Middle East is a relatively new, yet vigorously emerging field. In the past thirty years, a number of scholars have paved the way for the formation of a historical understanding of gender and family by applying methodologies that were in practice with respect to Europe and the United States earlier and also by employing new techniques to understand the sources unique to the field to produce both quantitative and interpretative results.⁴ For instance,

³ This approach draws on Geertz’ exhortation to interpret things in their context rather than assessing them in isolation. Geertz expressed the importance of “drawing large conclusions from small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective life by engaging them exactly with complex specifics.” My work is inspired by this discourse which tries, as Geertz stated, “not to generalize across cases but to generalize within them.” See Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 3-30.

⁴ The scholarship that has given direction to this field includes the works of Leslie P. Peirce, “‘She is trouble...and I will divorce her’: Orality, Honor, and Representation in the Ottoman Court of ‘Aintab,” *Women in the Medieval Islamic World: Power, Patronage, and Piety*, ed. Gavin R. G. Hambly (New York, 1988); Judith E. Tucker, “Marriage and Family in Nablus, 1720-1856: Towards a History of Arab Marriage,” *JFH* 13

Behar and Duben's study of late-nineteenth and early-twentieth-century Istanbul households employed the quantitative methodology developed by the Cambridge Group for the History of Population and Social Structure (established by Tony Wrigley and Peter Laslett in 1964) drawing on the censuses of 1885 and 1907 for the first demographic analysis of the family.⁵ Although their pioneering work mainly employed the demographic approach by focusing on household structure and size, nuptiality, and fertility rates, Behar and Duben also incorporated the sentiments approach developed by Phillipe Ariès (*Centuries of Childhood*, 1972), Lawrence Stone (*The Family, Sex and Marriage in England, 1500-1800*, 1977), and J. L. Flandrin (*Families in Former Times*, 1979).

Other scholars have also successfully integrated such sources as the sharī'a court records, estate inventories, and family endowment deeds, which enabled the progress of the field in a new direction. The development of comparable methodologies in the discipline was affected by a new type of historicism that dealt with its sources in an analytically

(2): 165-179; idem, "Ties that Bind: Women and Family in Late Eighteenth and Early Nineteenth Century Nablus," *Shifting Boundaries: Women in Middle Eastern History and Theory*, eds. Beth Baron and Nikki Keddie (New Haven: Yale University Press, 1991); idem, *Women, Family, and Gender in Islamic Law* (New York: Cambridge University Press, 2008); Aharon Layish, *Divorce in the Libyan Family* (New York: New York University Press, 1991); Nelly Hanna, "Marriage Among Merchant Families in Seventeenth-Century Cairo," *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El Azhary Sonbol (Syracuse, New York: Syracuse University Press, 1996), 143-155; idem, *Making Big Money in 1600: The Life and Times of Isma'il Abu Taqiyya, Egyptian Merchant* (Syracuse: Syracuse University Press, 1998); Madeline C. Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden: Brill, 1997), 264-297; Margaret L. Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840* (Austin, 1999); Beshara Doumani, "Adjudicating Family: The Islamic Court and Disputes between Kin in Greater Syria, 1700-1860," *Family History in the Middle East: Household, Property, and Gender*, ed. Beshara Doumani (New York: State University of New York Press, 2003), 173-200; İlber Ortaylı, *Osmanlı Toplumunda Aile* (İstanbul, 2000); Maria N. Todorova, *Balkan Family Structure and the European Pattern: Demographic Developments in Ottoman Bulgaria* (New York: Central European University Press, 2006).

⁵ Cem Behar and Alan Duben, *Istanbul Households: Marriage, Family, and Fertility 1880-1940* (New York: Cambridge University Press, 1991). See also the articles by Duben on household size and structure in Istanbul in the final decades of the nineteenth century: Alan Duben, "Turkish Families and Households in Historical Perspective," *JFH* 10 (1985): 75-97; idem, "Household Formation in Late Ottoman Istanbul," *IJMES*, Vol. 22, No. 4 (November 1990): 419-435; idem, "Understanding Muslim Households and Families in Late Ottoman Istanbul," *JFH* 15 (1990): 71-86.

empiricist manner. One of the principal works that brought forth the use of court records as a source for social and economic history was by Jennings, which introduced new possibilities to the field.⁶ Following in Jennings' footsteps, scholars were and continue to be challenged by the representativeness of the extant documents that inform on different aspects that relate to the family. Interpreting and drawing conclusions from fascinating sources whose ambiguous character makes them susceptible to misapprehension is a difficult task.⁷ Hence, to date, the court records and other significant archival documents such as official complaint registers (*şikāyet defterleri*) and registers of important affairs (*mühimme defterleri*) do not allow for a tracing of the history of the family in the manner in which it was sketched in Europe and the United States. It is for this reason that historians of the Middle East began to develop their own voice when a generation of post-Orientalist scholars, aspiring to invent their own methods of using the sources, mastered the languages of the archival sources and created an alternate discourse to give meaning to the archival

⁶ See Ronald C. Jennings, "Women in early 17th Century Ottoman Judicial Records: the Shari'a Court of Anatolian Kayseri", *JESHO* 18 (1975), 53-114; idem, "Divorce Among the Muslim Ottoman Subjects of Cyprus in the Period 1580-1640," *Histoire économique et sociale de l'Empire ottoman et de la Turquie (1326-1960)*, ed. Daniel Panzac (Paris, 1995); idem, "The Legal Position of Women in Kayseri, a Large Ottoman City, 1590-1630," *IJWS* 3 (1980): 559-582.

⁷ The issue of using the shari'a court records has been problematized by a number of scholars: Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *ILS* 5 (1998): 35-56; Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006); idem, "Muslim Women in Court according to the Sijill of Late Ottoman Jaffa and Haifa: Some Methodological Problems," *Women, the Family and Divorce Laws*, 126-140. For one of the most recent accounts of the state of the field in sicil studies, and a comprehensive list of studies that point out the imparity of reading the court records 'against the grain': Iris Agmon and Ido Shaham, "Introduction," *ILS* (Special Issue: Shifting Perspectives in the Study of Shari'a Courts: Methodologies and Paradigms) 15, no.1 (2008): 1-19; see Najwa al-Qattan, "Textual Differentiation in the Damascus Sijill: Religious Discrimination or Politics of Gender?" in *Women, the Family, and Divorce*, 191-201; Doumani, "Adjudicating Family"; see also the introduction in Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley and Los Angeles: University of California Press, 2003); In his article on the mediatory role and involvement of the court in resolving amicable settlements and disputes, Ergene also addresses the critical stance taken by scholars regarding the use of court records as a historical source, see Boğaç A. Ergene, "Why Did Ümmü Gülsüm Go to Court? Ottoman Legal Practice between History and Anthropology," *ILS* 17, Issue 2 (2010): 215-244.

documents.⁸ These studies were exemplary for later monographs and articles based on the sicils of specific districts, especially those focusing on marriage and family.⁹ While there was a multitude of works published in English based on research on the sicils, a parallel development also took place regarding research published in Turkish and other languages of the former Ottoman world. Although it may be argued that some studies based on court records lacked the analytical framework applied by the scholarship cited previously, promising studies by scholars such as Canbakal and Yılmaz have paved the way for studies that combine solid quantitative inquiries with systematic analysis that make regional and diachronic comparisons possible.¹⁰

⁸ The field of family history was also influenced by such approaches as the analysis of gender, as well as women's roles in society as tropes of modernity. See the article by Tilly who addresses this point, Louise Tilly, "Women's History and Family History: Fruitful Collaboration or Missed Connection?" *JFH* 12 (1-3) (1987): 303-315.

⁹ See, for example, Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa 1600-1700," *IJMES* 12 (1980), 231-44; idem, "Sharia, kanun, and custom in the Ottoman law: The Court Records of 17th century Bursa," *IJTS* 2 (1981): 131-147; Abraham Marcus, *The Middle East on the Eve of Modernity* (New York, 1989); Najwa al-Qattan, "Dhimmi in the Muslim Court: Legal Autonomy and Religious Discrimination," *IJMES* 31 (1999); Yvonne J. Seng, "Standing at the Gates of Justice: Women in the Law Courts of Early Sixteenth-Century Üsküdar, Istanbul," *Contested States: Law, Hegemony and Resistance*, eds. Mindie Lazarus-Black and Susan F. Hirsch (NY: Routledge, 1994): 184-206; Cem Behar, "Neighborhood Nuptials: Islamic Personal Law and Local Customs— Marriage Records in a *Mahalle* of Traditional Istanbul (1864–1907)," *IJMES* 36 (2004), 537–559; Beshara Doumani, "Endowing Family: *Waqf*, Property and Gender in Tripoli and Nablus, 1800-1860," *Comparative Studies in Society and History*, 40:1 (1998), 3-41; Fatma Müge Göçek and Marc David Baer, "Women's Experience in Ottoman Society through the Eighteenth Century Galata Court Records," *Women in the Ottoman Empire*; İlber Ortaylı, "Anadolu'da 16. Yüzyılda Evlilik İlişkileri Üzerine Bazı Gözlemler," *OA* I (1980): 33-40; Leslie P. Peirce, "Le dilemme de Fatma: Crime sexuel et culture juridique dans une cour ottomane au début des Temps modernes," *Annales. Histoire, Sciences Sociales*, 53e Année, No. 2 (Mar. - Apr., 1998): 291-319; Fariba Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century," 81-96.

¹⁰ For the works of Canbakal and Yılmaz see for example Hülya Canbakal, *Society and politics in an Ottoman town: 'Ayntab in the 17th century* (Leiden: Brill, 2007), and Fikret Yılmaz, "Boş Vaktiniz Var mı? veya 16. yüzyılda Anadolu'da Şarap, Eğlence ve Suç," *TTYY* 241 (2005): 11-49. To name a few of the works that produced important quantitative results without necessarily employing a contextual analysis: Abdurrahman Kurt, *Bursa Sicillerine Göre Osmanlı Ailesi (1839-1876)* (Bursa: Uludağ Üniversitesi Basımevi, 1998); Hayri Erten, *Konya Şer'iyye Sicilleri Işığında Ailenin Sosyo-Ekonomik ve Kültürel Yapısı (XVIII. Yüzyıl İlk Yarısı)* (Ankara: T.C. Kültür Bakanlığı, 2001); İbrahim Yılmazçelik, *XIX. Yüzyılın İlk Yarısında Diyarbakır (1790-1840)* (Ankara: Türk Tarih Kurumu, 1995); Mehmet İpçioğlu, *Konya Şer'iyye Sicillerine Göre Osmanlı Ailesi* (Ankara: Nobel Yayınları, 2001); Galip Eken, "XVIII. Yüzyıl Ortalarında Antep'te Aile," *OTAM* 11 (2000): 109-121; Ömer Demirel, "1700 - 1730 Tarihlerinde Ankara'da Ailenin Niceliksel Yapısı," *B* 211 (1991): 945 – 961; Rıfat Özdemir, "Tokat'ta Aile," *B* 211 (1991): 993-1052; idem, "Antakya, Antalya, Afyon ve Manisa

In his introductory essay to the edited volume on family history, Beshara Doumani contended that there is “a big block of history that is missing,” referring to the need for more research regarding the family and household during the period when the systematic cadastral surveys had become sporadic¹¹ and official censuses were not yet conducted.¹² This study analyzes the unexamined history of marriage and divorce patterns to understand the predicaments, sensitivities, and mentalities pertaining to family life. No monographs based on the sicils of Istanbul exist on family life—let alone marriage and divorce. This is

Şehirlerinde Ailenin Sosyo-Ekonomik Yapısı Üzerine Bazı Bilgiler,” *Fırat Üniversitesi Sosyal Bilimler Dergisi*, 7 (1-2) (1995): 1-65; Şadiye Tutsak, “Tereke Kayıtlarına Göre Uşak’ta Sosyal Hayat,” *Türk Dünyası Araştırmaları* 151 (Temmuz-Ağustos, 2004): 105-125; Abdullah Saydam, “Trabzon’da Gayri Resmi Nikah’ın Doğurduğu Problemler ve Boşanma Davaları (1830-44),” *OA XX* (2000); Güven Dinç, “Şer’iyye Sicillerine Göre XIX. Yüzyıl Ortalarında Antalya’da Ailenin Sosyo-Ekonomik Durumu,” *OTAM* 17 (2005): 103-129; For studies that focus on family history and are mainly based on estate inventories see the bibliographical essay by Hülya Canbakal, “Barkan’dan Günümüze Tereke Çalışmaları,” (2011); Zeynel Özlü, “Terekeler Işığında Göynük’te Aile,” *Akademik Araştırmalar Dergisi* 29 (2006): 81-102; Ömer Demirel et al., “Osmanlılarda Ailenin Demografik Yapısı,” *Sosyo-kültürel Değişme Sürecinde Türk Ailesi* 1 (Ankara: Aile Araştırma Kurumu, 1993), 97-161; Şerafettin Turan, “Tanzimat Devrinde Evlenme,” *İş ve Düşünce Dergisi* XXII, 182 (Ekim 1956); and for a general overview and historicization of the literature and of the Ottoman family, see İsmail Doğan, *Dünden Bugüne Türk Ailesi: Sosyolojik Bir Değerlendirme* (Ankara: Atatürk Kültür Merkezi, 2009). Although not based on the sicils, see also the article by Esra Yakut which deals with marriage and family-related fetvas in the collection of the seventeenth-century chief jurisconsult: Esra Yakut, “Şeyhülislam Çatalcalı Ali Efendi’nin ‘Fetava-yı Ali Efendi’ Adlı Fetva Mecmuasına Göre Osmanlı Toplumunda Aile Kurumunun Oluşması ve Dağılması,” *OTAM* 7 (1996): 287-318.

¹¹ It has been suggested that such pre-modern surveys as the *timars* held significant information regarding population and revenues, however, after the 1670s, the conduct of cadastral surveys became somewhat irregular. Although there were attempts in the earlier part of the nineteenth century to take censuses, these could not be considered cohesive. The principal official and cohesive population censuses were conducted in 1885 and in 1907, see Kemal H. Karpat, *Ottoman Population, 1830-1914: Demographic and Social Characteristics* (Madison, Wisconsin: University of Wisconsin Press, 1985), ft. 22. Recently, scholars have turned to ‘*avârız*’ registers, a form of irregular wartime tax in kind which was converted into money during the sixteenth century, for research on the history of population and the family in the seventeenth and eighteenth centuries. See, for example, Linda T. Darling, *Revenue Raising and Legitimacy: The Ottoman Financial Administration, 1560-1660* (Leiden: Brill, 1994); Suraiya Faroqhi, ‘Crisis and Change, 1590-1699’, *An Economic and Social History of the Ottoman Empire*, vol. II, eds. Halil İnalcık with Donald Quataert (Cambridge, 1994), 532-545; Süleyman Demirci, “Settling Disputes over Avârız Levies in the Ottoman City of Kayseri, c. 1620s-1660,” *Journal of Academic Studies* 5/20 (April 2004): 87–98; Dimitris Dimitropoulos, “Family and Tax Registers in the Aegean Islands During the Ottoman Period,” *The History of the Family* 9, no. 3 (2004): 275-286.

¹² Although the population count of 1831 has been referred to as the “first census” especially after the publication of its results by Enver Ziya Karal as such, it consists of many categorical limitations. For instance, since the reason for the 1831 survey was to register the non-Muslim male population for imposing a new personal tax and the Muslim males who were eligible for the military, this population survey only considered males as countable units. See Kemal H. Karpat, *Ottoman Population*, 47. See also Enver Ziya Karal, *Osmanlı İmparatorluğunda İlk Nüfus Sayımı, 1831* (Ankara: Devlet İstatistik Enstitüsü, 1997).

partly due to the limitations of demographic sources that enable the historian to draw certain conclusions regarding the age at marriage, rates of divorce and remarriage, mortality, fertility, and the practice of birth control. It is rather surprising that such a densely populated city as Istanbul—the capital city of the empire—was not properly analyzed in terms of family life in the period prior to the first population census records. Whereas much family and gender related research was done in Anatolian cities and in the Arab and Balkan provinces¹³ of the empire, very little is known about the subject in Istanbul prior to the Tanzimat reforms of 1839 with the exception of Zilfi and Zarinebaf’s considerable contributions.¹⁴ Acknowledging the valuable research of these scholars, the present study builds on their findings by employing a systematic approach to the analysis of a much larger sample of sicils and estate inventories of Istanbul.

Rather than explore whether the institution of marriage experienced a transformation over time, the dissertation elucidates what it meant to be married or divorced for both men

¹³ Among many, the works that have been significant to my study are Peirce, *Morality Tales*; Iris Agmon, "Text, Court, and Family in Late Nineteenth-Century Palestine," *Family History in the Middle East*, 201-228; idem, "Women, Class and Gender: Muslim Jaffa and Haifa at the Turn of the 20th Century," *IJMES* 30 (1998): 477-500; Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, California: University of California Press, 1998); idem, "Questions of Consent: Contracting a Marriage in Ottoman Syria and Palestine," *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, eds. Asifa Quraishi and Frank E. Vogel (Cambridge: Harvard University Press, 2008); idem, "Ties that Bound"; Dina Rizk Khoury, "Slippers at the Entrance or Behind Closed Doors: Domestic and Public Space for Mosuli Women," *Women in the Ottoman Empire*, 264-297; Hanna, *Making Big Money in 1600*; Meriwether, *The Kin Who Count*; Doumani, "Adjudicating Family"; Abraham Marcus, "Men, Women and Property: Dealers in Real Estate in 18th Century Aleppo," *JESHO* 26, no. 2 (1983): 137-173; Mary Ann Fay, "Women and Households: Gender, Power and Culture in Eighteenth-Century Egypt," (Ph.D. dissertation, Georgetown University, 1993); Dror Ze'evi, "Women in 17th-Century Jerusalem: Western and Indigenous Perspectives," *IJMES* 27, No. 2 (May, 1995): 157-173; Elyse Semerdjian, *Off the Straight Path: Illicit Sex, Law, and Community in Ottoman Aleppo* (New York: Syracuse University Press, 2008); Başak Tuğ, "Politics of Honor: The Institutional and Social Frontiers of 'Illicit' Sex in Mid-Eighteenth-Century Ottoman Anatolia," (Ph.D. dissertation, New York University, 2009); Nora Lafi and Ulrike Freitag, eds, "Special Issue: Daily Life and Family in an Ottoman Urban Context: Historiographical Stakes and New Research Perspectives," *The History of the Family* 16, issue 2 (2011): 79-182.

¹⁴ See for example Madeline C. Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," in *Women in the Ottoman Empire*; Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul."

and women in the eighty-five years from 1755 to 1840. In my inquiry, I primarily look at how spouses defined their perception of matrimony in terms of the measures they took to shape and navigate their parameters within this union. In particular, I deal with such questions as whether the structure of Ottoman marriage accommodated new trends. Did the marital institution adhere to certain patterns in order to facilitate change in other areas of life during this period? Which particular instances drove people to court, and in what ways did the adjudication process improve or worsen their lives? How did the basic normative regulations of Islamic law on property—for instance, dower, allowance, and inheritance—impact and shape the relationship of the conjugal couple? How did individuals negotiate and strategize about the transmission of their estate, and did this conscious effort affect the gender dynamics between spouses? Although the smallest possible unit of communal organization in society, the internal liaisons and external networks of family have a direct impact on society. The opposite is also true—the evolution that society undergoes inevitably affects the structure of family. By analyzing the principal documents that reflect Ottoman social consciousness and reactions to shifting balances, my dissertation seeks to determine as well whether the political and economic tensions of the eighteenth century had a significant bearing on the patterns, sentiments, and moral values regarding the urban family of Istanbul.

Modern historiography was inclined to define the eighteenth century in the Ottoman Empire as a period of stagnation and regression, the realities and disenchantment of which were mostly subdued by ostentatious leisure activities.¹⁵ As of the late-sixteenth century,

¹⁵ See the article by Roger Owen, “The Middle East in the Eighteenth Century and “Islamic” Society in Decline—a Critique of Gibb and Bowen’s ‘Islamic Society and the West’,” *Review of Middle East Studies* I (1975): 101-112.

Ottoman intellectuals generally identified the increase in power of particular groups, the permeability between social classes, and the overlap of professional boundaries as symptoms of decline. Thanks to a number of pioneering and exemplary studies in the last decade, the theory of decline was addressed and scrutinized. Through the criticism of the “decline” paradigm, the general view of the eighteenth century began to change, and it gradually came to be perceived as an era of shifting political and diplomatic equilibriums, assimilation, and transformation.¹⁶ The historiography of the eighteenth-century Ottoman Empire also tended to consider this period in terms of such binary oppositions as traditionalism versus modernization, decentralization versus centralization, east versus west. However, recent scholarship took issue with this approach, criticizing its retrospective attitude as delimiting our understanding of the historical process.¹⁷ For instance, Eldem argued that the eighteenth

¹⁶ For principle publications on the literature of “Ottoman decline” see Bernard Lewis, “Some Reflections on the Decline of the Ottoman Empire,” *SI* 9 (1958), 111-127; Cemal Kafadar, “Prelude to Ottoman Decline Consciousness,” (unpublished manuscript, 1991); idem, “The Myth of the Golden Age: Ottoman Historical Consciousness in the Post-Süleymanic Era,” *Süleyman the Second and His Time*, eds. Halil İnalcık and Cemal Kafadar (Istanbul, 1993), 37-48; idem, “The Ottomans and Europe,” *Handbook of European History 1400-1600: Late Middle Ages, Renaissance and Reformation I: Structures and Assertions*, eds. Thomas A. Brady, Jr., Heiko A. Oberman, and James D. Tracy (Leiden; NY; Köln; Brill, 1994), 613-615; idem, “The Question of Ottoman Decline,” *Harvard Middle Eastern and Islamic Review* 4, No. 1-2 (1997-98), 30-75; For primary sources on Ottoman intellectuals’ perceptions of decline, see G.L. Lewis (trans.) Kâtib Çelebi’s *The Balance of Truth* (London, 1957); Andreas Tietze, ed. and trans., *Mustafa Âli’s Counsel for Sultans (1581)* (Wien: Verl. D. Österr. Akad. D. Wiss., 1979-82). On the recent state of the discussion on decline, I comply with Betül Başaran’s approach. She stated that, “replacing the term ‘decline’ with a more neutral term such as ‘transformation’ does not resolve the problem entirely.” In order to better understand the instigators of societal change, Başaran pointed to the need for more studies exploring the institutions and Ottoman society in the eighteenth century: Betül Başaran, “Remaking the Gate of Felicity: Policing, Social Control, and Migration in Istanbul at the End of the Eighteenth Century, 1789-1793,” (Ph.D. dissertation, The University of Chicago, 2006).

¹⁷ Edhem Eldem, “18. Yüzyıl ve Değişim,” *Cogito- Osmanlılar Özel Sayısı* 19 (1999): 189-199. Hathaway stated, “The eighteenth century was still regarded as the period when decline finally caught up with the Ottoman Empire as European imperial powers took advantage of long capitulations to incorporate the empire into the emerging European-dominated world economy in a process that facilitated the rise of quasi-autonomous provincial overlords (a’yân)” in Jane Hathaway, “Rewriting Eighteenth-Century Ottoman History,” *Mediterranean Historical Review* 19, no.1 (2004), 31; Engin Deniz Akarlı, “Ottoman Historiography,” *MESAB* 30, no. 1 (1996): 33-36. These works criticized prior attitudes toward the eighteenth century, especially pointing to the realization of the Ottomans of their position in the world. Former studies that delineated certain administrative and military transformations in this period include Halil İnalcık, “Centralization and Decentralization in Ottoman Administration,” *Studies in Eighteenth Century Islamic History*, eds. Thomas Naff

century was not properly evaluated in terms of its period-specific characteristics due to the assumption that it was the era in which seeds of unprecedented transformations were planted. Hence, the eighteenth century was generally depicted as an indistinct period that was caught between the sixteenth century, which was referred to as the ‘classical age’, and the nineteenth-century reforms of the Tanzimat.¹⁸ Accordingly, such occurrences as the emergence of the *a’yāns*, the capitulations, and the Janissary revolts against the military reforms were interpreted as products of decentralization.¹⁹ While critiquing the ‘declinist’ approach, scholars such as Eldem, Hathaway, and Akarlı have also pointed to the problem of periodization, which essentially views the administrative reforms of the Tanzimat in the 1830s as the initial point when an approaching ‘modernity’—one that is in the service of westernization—was underway.²⁰ This idealization equated the efforts of ‘modernization’ to that which was ‘westernized,’ without the need to differentiate and identify these terminologies in their own context.

Given the fact that Ottoman rule was contested on many fronts during the eighteenth century, the period was one of challenges in the political, economic, and social realm.

and Roger Owen (Carbondale and Edwardsville: Southern Illinois University Press, 1977), 27-53; Norman Itzkowitz, “Eighteenth Century Ottoman Realities” *SI* 16 (1962); idem, “Men and ideas in the eighteenth century Ottoman Empire,” *Studies in Eighteenth Century Islamic History*, 15-27.

¹⁸ Eldem, “18. Yüzyıl ve Değişim,” 194.

¹⁹ Edhem Eldem, “18. Yüzyıl ve Değişim”; Akarlı, “Ottoman Historiography”; Donald Quataert, *The Ottoman Empire, 1700-1922* (Cambridge, 2000), 37-68. Consider also the works of Linda T. Darling and Suraiya Faroqhi that focus on the seventeenth-century, but address this issue regarding the approaches to the study of the eighteenth century: Linda T. Darling, *Revenue Raising and Legitimacy: The Ottoman Financial Administration, 1560-1660* (Leiden, 1994) and Suraiya Faroqhi, ‘Crisis and Change, 1590-1699’, 411-623. Also see Ortaylı who argues that “the eighteenth century can be described as the age of administrative decentralization in the empire, which was trying to survive through prodigious bureaucratic manipulations,” İlber Ortaylı, *Studies on Ottoman Transformation* (Isis Press, 1994), 87.

²⁰ Edhem Eldem, Daniel Goffman, and Bruce Masters, *The Ottoman City between East and West: Aleppo, Izmir, and Istanbul* (Cambridge, UK: Cambridge University Press, 1999), 139-141; Akarlı, “Ottoman Historiography,” 34; Hathaway, “Rewriting Eighteenth-Century Ottoman History,” 31.

Istanbul, as the imperial capital, was located at the center of this challenge. Drawing on the argument that the eighteenth century paved the way for the progression of “peripheralization and integration into the world system”²¹ that denoted the “long” nineteenth century, I explore the level of social consciousness that came with such internal volatility. As early as the second half of the sixteenth century, the inclusion of non-*devshirme* and the non-slave into the Janissary corps and the involvement of the Janissaries in commercial activities stimulated the emergence of a new kind of social group.²² In the eighteenth century, this mobility among the *re‘āyā*²³ and *askerī*²⁴ caused the formation of what certain scholars have explained as the emergence of a new group of local bourgeoisie.²⁵ While the palace elite began to spread out from the conventional center building kiosks and mansions along the shores of the Bosphorus and the Golden Horne, another gradual expansion of the city’s borders was taking place due to the construction of military garrisons in the Northern and Anatolian regions of Istanbul. These changes were reflected by the ruling elite who migrated to the waterfront and shores of the Bosphorus and were reflected as well through the blending of different social

²¹ Eldem, Goffman, and Masters, *The Ottoman City*, 139-141.

²² See the article by Kafadar which traces the emergence of this ‘group’ around the mid-sixteenth century: Cemal Kafadar, “Janissaries and Other Riffraff of Ottoman İstanbul: Rebels Without a Cause?” *Identity and Identity Formation in the Ottoman World*, eds. Baki Tezcan and Karl K. Barbir (Wisconsin: University of Wisconsin Press, 2007), 114-133.

²³ All of those groups, Muslim or non-Muslim, outside the *askerī* elite, engaged in economic activities and thus were subject to taxes.

²⁴ All of those groups belonging to the military or religious elite with complete tax exemptions; a non-Muslim, when granted such a status by a royal diploma also became an *askerī*.

²⁵ See Edhem Eldem, “Osmanlı Dönemi İstanbul’u,” *İstanbul Armağanı 3: Gündelik Hayatın Renkleri*, Mustafa Armağan (haz.), No. 47 (İstanbul: İstanbul Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı Yayınları, 1997), 14; Shirine Hamadeh explains this phenomenon as the “erosion of boundaries between traditionally distinct social groups was the gradual integration of members of the Janissary corps into the urban social and professional fabric; a process, which like the growing bureaucratization of the empire, had its roots in the contraction of the *devşirme* system since the mid-sixteenth century,” in her *The City’s Pleasures: Architectural Sensibility in Eighteenth-Century Istanbul* (Seattle: University of Washington Press, 2008), 32.

groups. Consequently, my project aims to analyze the nature of this reciprocal permeability, assimilation, and/or infiltration that was taking place between the different layers in society.

As can be detected in the outward expansion of the palace organization, a process of breaking with traditional institutions was in the making during eighteenth-century Istanbul.²⁶ Some scholars have argued that the period was characterized by two “antithetical” trends set forth via the elite: on the one hand, an inclination for change and reform, on the other, a predilection toward leisure and pleasure. Rather than depict the urge for change as a proclivity toward ‘westernization,’ I demonstrate that this break with traditional institutions was possibly paralleled by a transformation of the household structure and the balance of power between genders, which allowed for a new way of interaction among the ones who controlled certain mechanisms and those who were exposed to them.²⁷ Correspondingly, I study the cultural, social, and legal dynamics of the period in the context of certain developments in Ottoman society to better comprehend the nature of eighteenth century transformations.

The economic fluctuations, wars, and internal revolts during the examined period provide the background for a more informed perspective on marriage and divorce patterns in Istanbul. The years that are analyzed—the period between 1755 and 1840—were marked by the ongoing wars in Iran and Egypt and with Russia and Austria, economical instability caused by the rapid debasement of the silver content of the gurush, and internal upheavals by

²⁶ Artan, *Architecture as a Theatre of Life*, 109.

²⁷ Artan further suggests that, “the break with the traditional institutions wasn’t, however, in conflict with the shari‘a, nor were people merely subordinate to a higher culture, be it European or Ottoman. Rather, they were participants in unprecedented activities and thoughts, feelings and beliefs, imaginings and aspirations. The interaction of subcultures within the households of the Ottoman grandees, and through the households which had brought a new picture on the scene of Ottoman cultural realm merged the imperial “high” culture and “subordinate” cultures in the rituals and architectural culture of the Bosphorus,” *ibid.*, 139.

Janissaries in response to the reforms that were introduced. Maḥmūd II's (1808-1839) policies for restoring central authority in the provinces could not be carried out as planned due to the lack of authority over the administrators that were dispatched from the capital. The weakening of local administration facilitated the emergence of a series of uprisings in the Balkans during the first half of the nineteenth century. The national movements that were supported by the Russians were followed by the attainment of complete autonomy by the Serbs in 1829 and the recognition of an independent Greek monarchy in 1832.²⁸

Among the important factors that could have affected the everyday life experiences of Istanbul's inhabitants was the increasing flow of migration to the capital. Although current scholarship contends that migration in the eighteenth century did not impact the city's population significantly, these short-term congestions possibly instigated scarcities of employment, housing, and food supplies bringing with it an increased crime rate. At the same time these newcomers added ethnic and religious diversity to the city. Further research might show whether these immigrants, who typically became the temporary residents of bachelor's inns (*bekar odaları*), had any influence on family and neighborhood life in Istanbul during the late eighteenth century.

The records demonstrate that the ongoing wars prompted certain movements in market prices and wages.²⁹ One way of measuring the impact of these fluctuations was the categorical rise and fall of the dower values over the course of these eighty-five years.

²⁸ For a comprehensive account of the Greek insurgency, see Şükrü Hüseyin Ilıcak, "A Radical Rethinking of Empire: Ottoman State and Society during the Greek War of Independence (1821-1826)," (Ph.D. dissertation, Harvard, 2011). Ilıcak argues that the mentality that created the discourse of the Tanzimat cannot be identified without comprehending its connection to the Greek War of Independence.

²⁹ Şevket Pamuk, "Prices in the Ottoman Empire, 1469-1914," *IJMES* 36 no. 3 (August 2004): 451-468; Pamuk, "Appendix: Money in the Ottoman Empire, 1326-1914," *An Economic and Social History of the Ottoman Empire, 1300-1914*.

The dower, one of the most important entities in the lives of married women, was open to the impact of changing market forces, just like wages. In moments of crisis, the state resorted to controlling the use of precious metals such as gold and silver needed for the minting of coins, which also possibly had an impact on the dower values. At times, the increase in *ṭalāk* (repudiation) and *ḥul‘* (divorce initiated by the wife) registry in court coincided such life-altering occurrences as wars, natural disasters, and economic fluctuations; however, the inconsistency of these correspondences makes it impossible to explain the increases in a linear and collective fashion.³⁰

War could be considered a predictable motive for a couple's decision to divorce. For instance, the 1828-1829 war with Russia provoked considerable terror in the capital. Sultan Maḥmūd II issued a decree in July 1828 commanding the kadi of Istanbul to collect suitable men from each neighborhood to fight against the Russians. Given the risk of never returning home, it was reasonable for a man to give the courtesy of divorce to his wife. Although the correlation between divorce and mobilization of men appears to be a rational one, the fact that divorce rates did not always correspond to periods of mobilization makes such an explanation problematic. Hence, in my evaluation of numbers of divorce registration in court, I argue that the fluctuations result from many different factors coming together. However, it is also important to stress that each of

³⁰ Social anxiety prompted by a number of significant occurrences possibly cast a pall over the years examined. Apart from the cyclical wars with Russia and war with Austria, which had drastic economic and political impacts such as the fluctuations in the monetary system, and loss of domination in the Black Sea, such incidents as the deposition of the Sultan following the revolt in 1807 against the New Order established by Selim III must have indirectly affected matrimonial relations in the city. For instance in 1826 Sultan Maḥmūd II ordered the destruction of the Janissaries in Istanbul, after which a vast number of men belonging to the military class had lost an important part of their income. See Virginia H. Aksan, *Ottoman Wars 1700-1870: An Empire Besieged* (Great Britain: Pearson Education Limited, 2007); the *rūznāme* whose author is unknown, is an account of the author on the daily incidents in Istanbul, which he deems as significant during the 1769-1774 war with Russia: Süleyman Göksu comp. *Müellifi Mechûl Bir Rûznâme: Osmanlı-Rus Harbi Esnâsında Bir Şâhidin Kaleminden İstanbul (1769-1774)* (Istanbul: Çamlıca Basım Yayın, 2007).

these contingencies was unique and might have produced a variety of different outcomes. It is difficult, therefore, to make universal suggestions on causes of the rise and fall in divorce statistics.

It is for this reason that I employed a case-by-case methodology to substantiate my analysis of marriage and divorce in the given period. One intention for the examination of individual cases recorded in court is my aim to illustrate the strategies created to implement and/or evade the law in everyday life. The records determine the extent to which the court was utilized by women to formalize the results of settlements that possibly took place outside of the court's jurisdiction. My demonstration of the different manners in which the court was utilized by attendees suggests a great deal about the representational power of the court records. For example, the fact that 'Ayşe, Hādīce, and Zelīha, who were all residents of the 'Alī Faḫīh neighborhood, registered their divorces within the same week indicates, or at least suggests, that these three women had a network within which they discussed the kind of strategies they would use in order to obtain their desired outcomes in court.

Texts alone may not be perceived to reflect actual practices in their entirety; they are, however, the products of cultural notions and performances relating to the making and breaking of marriage and its actual manifestations in society. The court of the kadi provided equitable public hearing for all subjects' disputes.³¹ Determining the discrepancies

³¹ For a brief and meticulous explanation of the functioning of Islamic jurisprudence see Engin Deniz Akarlı who explains, "the efforts to understand and to effectively implement the implications of *sharī'a* for legal relations among human beings eventually developed into a legal tradition that constituted an elaborate branch of knowledge called *fiqh* (literally, discernment). A sophisticated hermeneutic methodology (*usūl al-fiqh* or Islamic jurisprudence) set the rules for deriving legal principles, guidelines and injunctions (*aḥkām*) from the fundamental sources of the legal tradition, most significantly, the Qur'an, the example of the Prophet (*sunna*) and the consensus of great legal scholars (*fuqaha*). These derivative principles, guidelines and injunctions, called 'the offshoots (or branches) of *fiqh*' (*furūgh al-fiqh*), formed a practicable law that enabled legal counsels (*muftis*) to lead others to correct conduct and judges (*qadis*) to settle

between the sharī'a-based normative legal paradigms in the context of marriage and their actual practice in the everyday lives of Muslim men and women of Istanbul is a challenging task. However, my principal source, the sharī'a court records (*sicils*), has the potential to bring to life the different aspects of the Ottoman household and family structure as well as women's role and knowledge of legal procedures.³² The term *sicil* literally indicates reading, recording, and giving a verdict. The sharī'a court records comprise the kadi's (*judge's*) rulings, registry of settlements, and disputes, occasionally they also contain *fatvas* recorded to elucidate certain suits, imperial edicts, and documents from other administrative branches issued to the office of the kadi.³³ Although the court of the kadi offered services

disputes in a relatively consistent yet flexible way" in his "*Maslaha* from 'Common Good' to 'Raison d'Etat' in the Experience of Istanbul Artisans, 1730-1840," (paper presented at the Arabic Seminar Series of Columbia University, New York, NY, 22 April 2004).

³² To date, the most comprehensive catalog of all the *sicils* in Turkey is by Akgündüz. The two volumes also include examples of court records, and they are thematically and categorically differentiated: Ahmet Akgündüz, *Şer'iyye Sicilleri: Mahiyeti, Toplu Kataloğu ve Seçme Hükümler* (İstanbul, 1989). For previous examples see Osman Ersoy, "Şer'iyye Sicillerinin Toplu Kataloğuna Doğru," *AÜDTCFD* XXI (3-4) (Ankara, 1963); Müctebâ İlgürel, "Şer'iyye Sicillerinin Toplu Kataloğuna Doğru," *TD* 28-29 (1975): 123-166; Yusuf Halaçoğlu, "Şer'iyye Sicillerinin Toplu Kataloğuna Doğru: Adana Şer'iyye Sicilleri," *İÜFTD* 30 (1976): 99-108.

³³ A basic account of the daily operation of a *sharī'a* court is presented by Jennings, "the daily sessions of the Ottoman *sharī'a* courts were open to every petitioner, including women. The presence at all court hearings of some representatives of the public (as 'instrumental witnesses,' *shuhūd ul-hāl*) was one of the requirements for a legitimate court session. Since all sessions were public, there could be no secret hearings or decisions. Court records (*sicil*) were kept in official registers by scribes who themselves had at least some knowledge of the law; their work was overseen by the judge (*kāḍī*), whose name and seal of approval were affixed to the records. The detail of the records ensures that the scribes made entries in the registers either at the time of the hearings or at least soon thereafter on the basis of careful notes." Ronald C. Jennings, "The Legal Position of Women in Kayseri, A Large Ottoman City, 1590-1630," *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries ~ Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (İstanbul: The Isis Press, 1999), 116; Boğaç A. Ergene, *Local Court*, 190-202; idem, "Pursuing Justice in an Islamic Context: Dispute Resolution in Ottoman Courts of Law," *POLAR*, 27, 1 (2004), 51-71; Muhammad Khalid Masud, Rudolph Peters, David S. Powers, "Qadis and their Courts: An Historical Survey," *Dispensing Justice in Islam: Qadis and Their Judgements*, eds. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden, Boston: Brill, 2006), 1-47. On the establishment of the court of the kadi of İstanbul see İsmail Hakkı Uzunçarşılı, "İstanbul ve Bilād-ı Selâse Denilen Eyüp, Galata ve Üsküdar Kadılıkları," *İstanbul Enstitüsü Dergisi*, I (1956): 25-30; Idem, *Osmanlı Devletinin İlmiye Teşkilâtı* (Ankara: Türk Tarih Kurumu Yayınları, 1988), 133-145; see also Bilgin Aydın, "İstanbul Kadılığı Tarihçesi ve İstanbul Kadı Sicillerine Dair Tetkikler," *İstanbul Araştırmaları*, 6 (Yaz 1998): 71-85; Halil İnalçık, "Maḥkama," *EI2* (Brill Online, 2013). One of the first resourceful articles to explain the state of the court records' archive in 1990s and the different functions of court as reflected in these records is by Yvonne J. Seng, "The Şer'iyye Sicilleri of the Istanbul Müftülüğü as a Source of the Study of Everyday Life," *TSAB* 15:2 (1991): 307-325.

in dispute resolution and negotiation, it also functioned as a notary public. Each case that was heard in the court of the kadi would be recorded in the sicil both for future reference and for proof. In the past decade, scholars of social history have managed to challenge the tendency to view pre-modern Islamic culture as a relic of “oriental despotism” by also bringing into perspective this facet of Islamic society, which was a deviation from the commonly accepted patriarchal structure. This approach argued that women’s position in society was much more active than thought earlier both in terms of their social and legal consciousness and their capability to control their own lives. Even if the sicils as a body of sources support this view, it is methodologically incorrect to evaluate them as documents from which the whole story could be attained. It should be noted that what is seen in these particular records does not always reflect the way an incident occurred and/or was dealt with by the actual litigants.³⁴

As the imperial capital, Istanbul was home to a variety of religious communities including Muslims, Christians, and Jews. For the purposes of this project and due to my linguistic training, I confine the scope of my research to the Muslim inhabitants of the city. The issue of the non-Muslims’ use of the sharī‘a court is only dealt with in court cases that are significant to my wider argument. In my inquiry, I use the records of three different courts located in *intra muros* Istanbul. These courts, namely the Dāvud Pasha, Ahī Çelebi, and İstanbul Bāb, were affiliated with and subordinate to the Istanbul court. I also deciphered the records of the Ahī Çelebi and İstanbul Bāb courts from H.1168-1255 (1755-1840 A.D.) and those of Dāvud Pasha from H.1196-1255 (1782-1840 A.D.) using a sample

³⁴ Here, I refer to the seminal work of Messick, who studied the discursive process in the formation of the calligraphic text, namely fetvas and other legal documents, by the authoritative/political entities that shapes its composition, see Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

of forty-two ledgers within the span of eighty-five years. The reason for the later date of the Dāvud Pasha court's records was due to their total destruction by a great fire in 1782. Hence, it is unfortunate that what remains is the collection of records beginning with this date. The use of earlier sicils from the Ahī Çelebi and İstanbul Bāb courts serves as a comparative reference in terms of my assessment of the nature of the lawsuits and their representational numbers.

While I acknowledge that this type of study has its limitations, the varying disputes of family and gender over a wide range of issues including inheritance, property rights of women, and child custody illustrate the relationship between the individual and the court in terms of the latter's mediatory position in the lives of these people, which influenced the composition of the marital institution. The decisions that were issued and articulated in these ledgers reflect a process of active negotiation. Apart from gathering information from the actual disputes, a concentrated study of this precise system of operation brings to light the perception and notion of family in the legal realm. The discourse of the sicils gives further details about the way gender relations were perceived, challenged, and regulated in the cultural and social environment of the period.

Another source that I consult for my exploration of the dynamics of marriage and divorce is the collection of fetvas from the period. In order to present a comprehensive portrayal of the legal framework and social mentality within which language and text were actively negotiated, I refer to the fetva collections of influential late-seventeenth and eighteenth-century chief jurisconsults (*şeyh'ül-islāms*). Fetvas were non-binding judicial 'opinions' on specific questions, which were widely used in the training of judges and represented a theoretical legal framework in accordance with the sharī'a. They would

frequently be presented to the court of the kadi to serve as a model for the case in question. One central question that I address is the correlation between the fetvas and the kadi's rulings. Given the fact that a kadi's decisions were based on "cultural sensitivities and preferences prevalent in his society,"³⁵ I examine the possible discrepancies between the opinions projected by the fetva and the one presented by the kadi. The comparison of the sicils with prescriptive sources is effective in differentiating the practical from the "ideal" world denoted by these documents. The three collections that I reference in my dissertation are those of Yenişehirli Ebü'l-Fadl 'Abdullāh Efendi's (d. 1742 or 43) *Behçetü'l-Fetāvā*, of Çatalcalı 'Alī Efendi's (1631 or 1632-1692) *Fetāvā-yı 'Alī Efendi*, and of Feyzullāh Efendi's (1639-1703) *Fetāvā-yı Feyziye*.³⁶ In these collections, I particularly focus on the chapters that relate to the subjects of marriage, divorce, pregnancy, childrearing, licit and illicit sexual intercourse, and alimony among a variety of others.

The third source that I consult for the evaluation of inheritance strategies and property allocation patterns is the inventory of estate records, also referred to as *muḥallefāt* or *tereke*. The term *muḥallefāt* indicates the property left behind by someone who was deceased.³⁷ The estate records are registers that systematically listed the immovable and movable property as well as the donations, alms, endowments, debts, and loans of the deceased, while also outlining its allotment among family, kin, and other legal

³⁵ Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (NY: State University of New York Press, 2004), 12.

³⁶ Yenişehirli Ebü'l-Fazl 'Abdullah, *Behçetü'l-fetāvā*, Mehmed Fıkhī el-'Aynī, comp. (İstanbul: Dârü't-Tıba'atı'l-Amire, H.1849/1266); Çatalcalı Ali Efendi, *Fetava-yı Ali Efendi ve fetava-yı Feyziye* (Dersaadet: Şirket-i Sahhafiye-yi Osmaniye Matbaası, H.1324 [1906 or 1907]); and Feyzullāh Efendi, *Fetāvā-yı Feyziyye mā'an nuḳūl* (İstanbul: Dar üt-Tıbaat ül-Amire, 1266 [1850]).

³⁷ Tahsin Özcan, "Muḥallefāt," *TDVİA* 30 (1988x), 406-407.

heirs.³⁸ The 264 estate records that I analyzed are mainly of individuals who belonged to the relatively well-to-do segment of society. The sample included those individuals who were either long-time residents of the capital or who had come to this city for work and had died in Istanbul. Some of the deceased had family and non-blood-related kin living elsewhere; some had no legal heirs. It is perhaps for this reason that my selected sample inclusive of the years H.1196 (1781A.D.) and H.1250 (1835 A.D.) was preserved in the archives of the Prime Ministry, in the Bāb-ı Defteri collection, instead of in the civil and military classes' probate inventories that were recorded in the sicils.³⁹ This particular resource was useful in drawing comparative conclusions between the economic and social positions of benefactors who were married and had children and benefactors who were married without having had any children as well as single and/or widowed individuals without heirs or offspring. It was also an essential primary source for gathering specific information regarding the social differentiation, distribution of income, gender in terms of property ownership, age, and social mobility in relation to different professional groups.

³⁸ Probate inventories of the deceased would be recorded with the help of the *ḳassam* into the *tereke* registers or *ḳassam* registers or they would be registered in separate books called *muḥallefāt*. The *ḳassam* was a *legal* state official, a trustee, who was responsible for dividing a deceased person's estate among the heirs, Halil Cin, *Eski ve Yeni Türk Hukukunda Tarım Arazilerinin Miras Yoluyla İntikali* (Ankara: 1979), 54-55; Ömer Lütfi Barkan, "Türk Toprak Hukuku Tarihinde Tanzimat ve 1278 (1858) Tarihli Arazi Kanunnâmesi," *Tanzimat I* (İstanbul: 1940), 396; see also Şefika Kurnaz, *Cumhuriyet Öncesinde Türk Kadını 1839-1923* (İstanbul: 1997), 51-52; Cengiz Orhonlu, "Ḳassam", *EI2* (Brill Online, 2012).

³⁹ Özcan explains that in Istanbul, apart from the court records that contained the estate inventories of the military class, and that of those who were not affiliated with the military, the Prime Ministry archives also contained a large number of estate inventories under the *Bāb-ı Defteri Başmuhasebe Kalemî* and *Muhallefāt Halîfeliği Kalemî*, Özcan, 407. It has been noted by both Özcan and Fatma Müge Göçek that the estate inventories of those individuals without any legal heirs were registered in the *Başmuhasebe Muhallefāt Halîfeliği* archives. However, my assessment of 264 documents has shown that the estates of those individuals with legal heirs and children could also be included in this archive. Compare Fatma Müge Göçek, Fatma Müge Göçek, "Mukḥallefāt," *EI2* (Brill Online, 2012).

Other archival documents that I used in my research include imperial edicts, rescripts and mandates, and imperial warrants preserved in the Prime Ministry Archives in Istanbul. In my contextualization of marriage and divorce, I also examined the relative sections from treatises on morals and conduct, encyclopedic and literary compositions, and chronicles of such contemporary historians as Şem'dānī-zāde Fındıklılı Süleymān Efendi, Şānī-zāde Mehmed 'Atā'ullāh Efendi, Cābī 'Ömer Efendi, among others, to generate qualitative-normative cultural analyses. These texts provide the requisite framework for my understanding of the existing social patterns and popular notions with respect to marriage patterns, divorce settlements, child-rearing practices, and the issue of women's agency with regard to their designated roles in matrimony.

In the first chapter, I discuss the legal conceptualization of matrimony pertaining to the nature of the Islamic marriage contract to evaluate its meaning in this particular society. I specifically explore the animate relationship between individuals and the court in judiciary and extra-judiciary spheres as well as the court's intermediary position in terms of its participation in private life to comprehend its involvement in the way the eighteenth-century matrimonial institution was composed and perceived. By reading between the lines of relevant sections from a conduct manual and an encyclopedic treatise, I extract the normative aspects of these texts from what appears to be their authors' empirical observations in order to understand the mentality behind their critique of women's present state. The consideration of these sources provides a more comprehensive perspective for the evaluation of the cases in the court records. Given the multitude of registered settlements by men and women regarding the marital union, I argue that the wide-ranging practice of registration in court could be identified as preliminary to the codification of

marriage in the following decades. Using the court's legal authority may have been a preventative method to avoid future claims arising from marital disputes. Its taking part in the process of resolving such conflicts, however, served the purpose of establishing a gradual yet systematized recording of the marital union.

In the second chapter, I first discuss the two different categories of divorce, namely *talāk* and *hul'*, as they were commonly practiced in eighteenth-century Istanbul. The thematic discussion of those categories (and sub-categories) is substantiated by documented examples of court cases. Secondly, I examine the fetvas with regard to their instructive role in keeping proper conduct and show how these fetvas and rulings of kadis served complementary purposes in the execution of the sharī'a. Finally, and most importantly, I identify that the Dāvud Pasha court had acquired a specialized function regarding the resolution of matrimonial suits and explore how this is reflected in late eighteenth-century Ottoman society.

Although the specialization of courts is not the primary concern of this thesis, the Dāvud Pasha court's seeming concentration in marital issues such as divorce and alimony related claims is a truly significant phenomenon that has a bearing on the social values and customs, matrimonial patterns, economic affairs, and gender constructions embodied within specific localities of Istanbul during this period. Perhaps this precise development was the society's—and especially women's—response to the successive wars and the social and legal necessities generated by their impact. Whereas in some instances the continuous wars, the widespread fires, and severe earthquakes might have triggered the increase in the registry of divorce, it could also be argued that such occurrences could have had the potential to solidify marital bonds under different circumstances.

Nevertheless, it may be suggested that the determination and necessity felt by women to register and formalize divorce settlements seem to indicate their desire for the formalization of matrimonial affairs. This necessity is distinctly illustrated in the ledgers of the Dāvud Pasha court many years prior to the establishment of the first Ottoman law of family rights in 1917.

In the third chapter, I examine the transfer of materials of financial value—including money and immovable property—between the nuptial couple in exchange for, or freedom from, certain rights and responsibilities. I provide detailed definitions of the specific terminology used to discuss property and marriage—namely dower and allowance—to inform the broader discussion of why individuals desired marriage, and possibly remarriage, during late-eighteenth- and early-nineteenth-century Istanbul. In assessing the tendencies that shaped women’s economic activities in the social realm, my intention is to comprehend the ways in which the marital bond offered safeguards and augmented women’s livelihood. I argue that this pursuit put women in the center of a network system, equipping them with a sense of empowerment under what could be considered to be tenuous circumstances. This exploration of the relationship between property allocation patterns in marriage—“dower” and “allowance” in particular—contributes to our knowledge about women who were able to claim sole ownership of their possessions.

In the fourth chapter, I address the question of property ownership by women in terms of their involvement and agency in transmission and allocation patterns in marriage. For this reason, in my discussion of women’s activity and practices in managing the transmission of their possessions, I use estate inventories and bequests to corroborate my

interpretation of their relationship to property as they were manifested in the archival documents. The primary objective of this chapter is to demonstrate the level of initiative and administrative control that women asserted, especially with respect to their participation in some innovations. In the first part of the chapter, I examine women's management of their property in the face of changing circumstances and their involvement in such economic and structural innovations as *esāme* (the state's sale of infantry and cavalry regiments' pay-certificates) and *gedik* (use-rights of the implements of an artisanal or trade work premise). In the second part, I identify the methods people applied to circumvent the sharī'a's compulsory rules of inheritance and explore quantitatively how these reflected on women's positions within the marital union. In my assessment of property allocation patterns by married individuals, I recount the kind of strategies that spouses arranged, such as the endowment of family waqfs, wills, gifts, and sales of valuables to preserve ownership of their possessions within the family. The direct involvement of women in property allocation practices to evade certain regulations reinforces the view of women's agency. It is indeed the aim of this dissertation to place the actions of married and divorced individuals into an intelligible framework. In my exploration of negotiations that took place within marriage, divorce, and property allocation practices, I hope to contribute to the current scholarship by presenting husbands and wives in their roles as family members in the court.

CHAPTER ONE

The Prospect of the Marital Bond in Late Eighteenth-Century Istanbul: A Companionate Relationship?

The spirit of a person who is getting married will find relief in being redeemed from considering the daily chores of a household. A person wasting his precious time by attending to the essentials of his dwelling's upkeep would be deprived of enlightenment and vocation. It is for this very reason that having a suitable wife is deemed even a finer fortune in the afterlife, than it is in this mundane life. A wife's taking charge of domestic chores and satisfying her husband's carnal desire in a manner permissible by the sharī'a, facilitates a man's concentration on his deeds so that he can better prepare for the afterlife.¹

İbrāhīm Hakkı of Erzurūm

The Entity of Marriage as Reflected in Treatises on Ethics and Conduct

This passage written by one of the influential intellectuals and *sufi* thinkers of the eighteenth century, İbrāhīm Hakkı of Erzurum² (1703-1780?), is an excerpt from the *Mārifetnāme*, his renowned encyclopedic compendium on astronomy, cosmology,

¹ Erzurumlu İbrāhīm Hakkı, *Kitab-ı Marifetname* (Bülāq: al-Maṭba'ah al-Kubrā, 1257 [1841]), 537.

² Esin Kahya has noted that of the editions in Turkey and the world, the most reliable and important manuscript of *Marifetname* was the one preserved in the Konya Mevlana Museum, no. 1673. Since this copy contained thirty-seven figures and was scripted by Ahmed Muṣṭafā in 1756, Kahya has postulated without—any verification—that this copy might have been dictated by İbrāhīm Hakkı himself. The earliest printed copy in Istanbul was produced in 1294 and reprinted in 1310 in the Matbaa-ı Amire. For a brief discussion of the extant manuscripts and the scientific contribution of İbrāhīm Hakkı, see Esin Kahya, "Erzurumlu İbrahim Hakkı," *AÜİFD* 40/1 (1999): 371-385.

anatomy, and ethics.³ The *Mārīfetnāme*'s contents regarding the disadvantages and benefits of marriage and its teachings on the conduct between husband and wife illustrate the mentality of its well-read author and offer a glimpse into the general sensitivities of the society he lived in with respect to marriage.⁴ Perhaps the author's views on the mutual duties of the nuptial couple toward one another are not surprising. He renders marriage as an institution advisable only for those who can endure its burdens and benefit from its virtues.⁵ In view of the requirements and responsibilities that materialize in marriage, the ideal wife is assertively portrayed as an obedient, tender, and loving woman whose main reason for existence revolves around facilitating her husband's life so he can have the essential time to fulfill more imperative undertakings, such as educating himself and his

³ Born in eastern Anatolia, in Ȧasankale near Erzurum, İbrāhīm Hakkı's life was devoted to the study of science and *sufi* cosmology. Although he was locally established as a teacher in the madrasa both in Erzurum and Tillo, where his *sheykh* was based, İbrāhīm Hakkı conducted many travels to the east including the Hijaz, Mecca, and Egypt, and to the west, to Istanbul. During his first visit to Istanbul in 1747, it is believed he was given permission to use the palace library by Sultan Maĥmūd I (r.1730-1754). During his second trip to Istanbul in 1755, it was reported that İbrāhīm Hakkı made use of the palace library again for a brief period of time. The *Mārīfetnāme* was completed in 1756/57 soon after his second and final visit to the capital: Cafer Durmuş and Kerim Kara sadeleştirme, *Erzurumlu İbrhīm Hakkı Hazretleri Mārīfetnāme c.I*, (İstanbul: Erkam Yayınları, 2011), 14-72; Mesih İbrahimhakkıoĥlu, *Erzurumlu İbrāhīm Hakkı* (İstanbul: Tatlıdil Matbaası, 1973), 79 and 91-95; The extant copies of the Turkish manuscript, and the existence of its translated and printed versions in Arabic, Persian, and French in the nineteenth century, indicate its widespread use during the late-eighteenth and throughout the nineteenth centuries.

⁴ While there are a number of ethical treatises such as *Hülāsatü'l-Aĥlāk* by Osmān-zāde Aĥmed Tāib (d. H.1137/ 1724 A.D.) and *Bergüzār* by Yaĥlıkçı-zāde Aĥmed Rifāt (d. H.1312/1894 A.D.) that discuss the issue of ideal conduct in marriage, I have chosen to mention only the work discussed here. My analysis of the views of İbrāhīm Hakkı serves as a point of reference for the normative mentality of the period under scrutiny, and it is in no way universally representative of attitudes towards marriage. Such a study would essentially have to draw conclusions from a diachronic examination of other major treatises that address the marriage institution. A comprehensive survey and analysis of the conduct literature exceeds the scope of this specific project; however, its treatment in a future study would be a major contribution to the field of family history.

⁵ İbrāhīm Hakkı identifies the burdens of marriage in three different categories. The first is that marriage reduces one's potential to generate an honest earning; the second is that marriage makes one negligent regarding his relationship to other family members; and the third is that the wife and children intercept one's devotion to God. On the other hand, since the virtues of marriage are identified as five, the author believes that their multitude outweighs the mischiefs. [How about "...their multitude supersedes the difficulties"?] According to İbrāhīm Hakkı the first benefit to being married is the continuity of the human race; the second is being protected from zinā (adultery) and deriving pleasure from one's wife; the third is that a man's desire finds relief and satisfaction in his spouse; the fourth is that a man finds comfort in being absolved from household chores since his wife is to carry out this duty; the fifth is that when occupied with family members' education and upbringing, a man also learns to tame his ego: *Kitab-ı Marifetname* (H.1257/1841 A.D.), 537-539.

offspring, and working to become a more resourceful person and be closer to God. The nuptial union is signified as a revered entity that better enables a man's devotion to his faith and for this reason reinforces and encourages his good conduct. However, the role of a woman within marriage is solely depicted as acquiescent and transient, while that of a man is portrayed as proactive and prevailing since all of his duties in marriage are an effort to acquire absolute fulfillment in the afterlife.

As a common feature of the treatment of marriage in ethical sources, İbrāhīm Ḥaḳḳı's instructions and guidance are prescriptive for men. Even if the initial phases of the narrative maintain a gender-neutral manner by use of such phrases as "tezvīc eden kiři" (a person who gets married), it gradually develops into a text that solely addresses an all-male audience. Women, in contrast, are mentioned only in relation to their association to their husbands and generally within the scope of their domestic function. This effacing discourse was common and is consistent with the use of language in other treatises of conduct and ethics from prior periods. This proclivity seems to have been an inherent aspect of the language and manner adopted by ethics manuals. An earlier example, Kınalı-zāde 'Alī Çelebi's sixteenth-century treatise, also addresses an all-male audience when providing instructions on what constitutes an ideal spouse. In his prescriptive manual, Kınalı-zāde explains the qualities that comprise an ideal wife through the presentation of her dichotomous traits—such as free (*hürr*) versus slave women, virgin maidens versus widows and divorcees—and places a tendentious emphasis on the disadvantages of the latter.⁶

⁶ As a main reference to the text, I have consulted the edition of Mustafa Koç, who used the Bursa Yazma Ktp. Hüseyin Çelebi no. 519 edition out of an estimate of one hundred manuscripts of Kınalı-zāde 'Alī Çelebi's *Ahlāk-ı 'Alā'ī*; see Mustafa Koç, *Ahlāk-ı Alā'ī- Kınalzāde 'Alī Çelebi* (İstanbul: Klasik, 2007), 349-363. When Koç was preparing the edition, he also contrasted the text with the manuscript preserved in the Topkapı Palace

What is unique to İbrāhīm Hakkı's text is that unlike his precursor Kınalı-zāde 'Alī Çelebi, he does not take a condemnatory stance on women's modes of operation within marriage. Given that Kınalı-zāde's is a prescriptive text on morals, it is expected that it would have a moralizing attitude. For instance, Kınalı-zāde criticizes those wives who are conceited and relentlessly demanding. He asserts that a wife should be able to differentiate between that which is moral and that which is immoral. If her ambitions and expectations surpass her husband's means, they may even stand the chance of losing their income and other assets. He believes that having an abundant fortune and not being able to discern between good and evil are factors that result in a wife's compulsory supremacy and domination over her husband. For this reason, Kınalı-zāde expresses grief over the fact that men have become the *hādım* (like a servant) and women, the *efendi* (like one who is being served) in marriage.⁷ According to Kınalı-zāde, men were stripped of their

Museum Library, Hırka-i Saadet, no. 374 and the printed Bulak edition, printed in H.1248/1833 A.D. According to Koç, the Bursa Yazma Ktp. Hüseyin Çelebi no. 519 edition of the manuscript had been handwritten by the author himself, which is deduced from the reference "bî-ḥaṭṭ-ı müellifihi" and 'Alī Çelebi's marginal note of authorship of the manuscript. Koç believes the manuscript, comprising 266 folios, is the most complete edition. I have also consulted the edition consisting of 279 folios, Kınalı-zāde 'Alī Çelebi [1510-71], *Ahlāk-ı Alā'ī*, undated MS Turk, 28, Houghton Library, Harvard University. According to his thorough analysis of the Ottoman manuscripts preserved in the manuscript collection of the Houghton Library, Hakan Karateke has suggested that this copy is missing a few pages at the beginning and at the end: for further information see Hakan Karateke, *Ottoman Turkish Manuscripts and Documents at Harvard's Houghton Library* (Cambridge, MA: Center for Middle Eastern Studies, Harvard University, 2006), 182. Recent publications on Kınalı-zāde's teachings on family life and marriage have not made a critical note of the text's patriarchal discourse and have assumed its narration to be comprehensive: Hüseyin Öztürk, *Kınalı-zāde Ali Çelebi'de Aile Ahlakı* (Ankara: Aile Araştırma Kurumu Başkanlığı Yayınları, 1990), 97-129, and 153-158; Kemal Gurulkan, ed., *Devlet ve Aile Ahlakı-Kınalızade Ali Efendi* (İlgi Yayınları, 2010); Süleyman Solmaz, *Onaltıncı Yüzyıl Tezkirelerinde Şairin Dünyası Ahdi - Gelibolulu Ali - Kınalızade – Beyani* (İstanbul: Akçağ Yayınları, 2012); the only work that treats the issue, and is an exception, is the book based on the dissertation research of Oktay: see Ayşe Sıdika Oktay, *Kınalızade Ali Efendi ve Ahlak-ı Alai* (İstanbul: İz Yayıncılık, 2012), especially 317-366. Oktay has suggested that since Kınalı-zāde relied almost exclusively on the ethics treatises of Tūsī and Devvānī, he misses out on the social realities of his own time. For an evaluation on Kınalı-zāde's teachings on household and family economics, Sabri Orman, "İlm-i Tedbir-i Menzil: Oikonomia ve İktisat," *Sosyo-kültürel Değişme Sürecinde Türk Ailesi 1* (Ankara: Aile Araştırma Kurumu, 1993), 265-310.

⁷ Mustafa Koç, *Ahlāk-ı Alā'ī*, 355.

manhood and conquered by the dominance of women.⁸ This tendency to bemoan the present state of the marital union is indicative of the author's anxiety in the face of changing patterns within the patriarchal structure of the marital bond. Although his views on marriage and polygyny were a reaction to the state of family life in the sixteenth century, we shall see in the following chapter that certain views of the eighteenth-century chronicler Şemʿdāni-zāde on the relationship between the sexes were similarly formulated. This aspect may arguably be illustrative of the fact that marriage and family were conservative formations that resisted radical transformations. Nevertheless, these entities were not completely detached from the transitions that affected society, and, hence, the structure of marriage gradually adapted to the circumstances brought about by social, economic, and political developments.

In an introductory essay on the literature of conduct and politics of desire, Armstrong and Tennenhouse addressed perhaps one of the most significant points that informed my reading of the treatises on marriage treated in this project:

Anthropologists generally agree that cultures systematically designate a certain kind of woman as the object of desire. The exchange of such women not only determines the economic and political organization characterizing the group within which such an exchange of women takes place...because redefinitions of desire often revise the basis of political power, or human nature itself, one might say that changes in the understanding of desire, the practice of courtship, and the organization of the family are culturally antecedent to changes in the official institutions of state.⁹

⁸ Ibid.

⁹ Nancy Armstrong, and Leonard Tennenhouse, "Introduction," *The Ideology of Conduct: Essays in Literature and the History of Sexuality*, eds. Nancy Armstrong, and Leonard Tennenhouse (New York, and London: Methuen & Co., 1987), 1-2.

It is in this spirit that I interpreted the influence of the treatises on marriage in the context of the marital union. What remains as a challenge, though, is deciphering the extent to which these conduct manuals mirrored the actual structure of marriage and how much their authors' ideological representation of the subject matter was projected onto marriage itself. The following evidence from the records of the Dāvud Pasha, Aḥī Çelebi, and İstanbul Bāb courts along with 264 estate records enhance our knowledge of how marriage was formulated and perceived.

A study spanning a period of eighty-five years must address the question of transformation. Although a variety of transformations condition our knowledge and understanding of the late-eighteenth century, an actual reform and change in state administered regulations regarding marriage and its conduct did not take place during this period. This study, rather, concentrates on the aspect of change from within conditioned and internalized by those participating actors who desired opportunities that would improve their positions in marriage. Hence, the conflicts between the spouses that appear in the court records allow for the interpretation of whether an internal potential for change existed vis-à-vis the marriage institution. It is these demands and resolutions in court, as well as the actions and desires of the litigants, that inform us about aspirations towards a transformation in the relationship between spouses. When assessing what was happening within the institution of marriage prior to the attempts towards its formalization by the state in the early-twentieth century, it is important to reconsider the way in which eighteenth-century married individuals in Istanbul perceived and negotiated their conjugal roles in the context of the shifting balances within marriage alleged by Şemʿdānī-zāde, whose views will be discussed in the next chapter. Although there are a few studies

focusing on the state of the marital union in the Arab and the Balkan provinces of the empire, a monograph dealing with the subject matter based on the sicils of Istanbul during the period of our inquiry remains unwritten.¹⁰

It appears that İbrāhīm Hakkı and Kınalı-zāde clearly shared many views in their patriarchal attitude towards the establishment of the marital union.¹¹ Some differences

¹⁰ In the past few decades, there has been a growing interest—by scholars both inside and outside Turkey—in issues relating to gender and family as they are illustrated in the local court registers. Some of these studies contributed to our knowledge of demographic particularities thanks to their regional focus. Although the present popularity of the sicils as a source for socio-economic historical analysis has precipitated an abundance of publications and theses whose main foundation are the court registers, unfortunately not all of these studies grasp the problematic nature of this particular source. The following partial list comprises studies that belong to both of the categories mentioned above. Irrespective of their manner of use of the sicils, these publications have been important contributions that advanced the field of family history in Ottoman studies. For monographs and articles based on the sicils of a specific district or province, especially those focusing on marriage and family, see (for a detailed version of this list see the Introduction ft.5), Kurt, *Bursa Sicillerine Göre Osmanlı*; Erten, *Konya Şer'iyye Sicilleri Işığında Ailenin Sosyo-Ekonomik ve Kültürel Yapısı*; Yılmazçelik, *XIX. Yüzyılın İlk Yarısında Diyarbakır*; İpçioğlu, *Konya Şer'iyye Sicillerine Göre Osmanlı Ailesi*; Eken, "XVIII. Yüzyıl Ortalarında Antep'te Aile"; Demirel, "1700 - 1730 Tarihlerinde Ankara'da Ailenin Niceliksel Yapısı"; Özdemir, "Tokat'ta Aile"; idem., "Antakya, Antalya, Afyon ve Manisa Şehirlerinde Ailenin Sosyo-Ekonomik Yapısı"; Tutsak, "Tereke Kayıtlarına Göre Uşak'ta Sosyal Hayat"; Saydam, "Trabzon'da 'Gayri Resmi Nikah'ın Doğurduğu Problemler"; Dinç, "Şer'iyye Sicillerine Göre XIX. Yüzyıl Ortalarında Antalya'da Ailenin Sosyo-Ekonomik Durumu"; Gerber, "Social and Economic Position of Women"; Jennings, "Women in Early 17th Century"; idem., "Divorce Among the Muslim Ottoman Subjects of Cyprus"; idem., "The Legal Position of Women in Kayseri"; Behar, "Neighborhood Nuptials"; Göçek and Baer "Women's Experience in Ottoman Society"; Ortaylı, "Anadolu'da 16. Yüzyılda Evlilik". For studies that focus on family history and are mainly based on estate inventories see the bibliography provided by Özlü, in Özlü, "Terekeler Işığında Göynük'te Aile," *Akademik Araştırmalar Dergisi* 29 (2006): 81-102; Demirel et al., "Osmanlılarda Ailenin Demografik Yapısı"; Turan, "Tanzimat Devrinde Evlenme"; and for a general overview and historicization of the literature and of the Ottoman family, see İsmail Doğan, *Dünden Bugüne Türk Ailesi: Sosyolojik Bir Değerlendirme* (Ankara: Atatürk Kültür Merkezi, 2009). Although not based on the sicils, see also the article by Yakut which deals with marriage and family-related fetvas in the collection of the seventeenth-century chief jurisconsult: Esra Yakut, "Şeyhülislam Çatalcalı Ali Efendi'nin 'Fetava-yı Ali Efendi' Adlı Fetva Mecmuasına Göre Osmanlı Toplumunda Aile Kurumunun Oluşması ve Dağılımı", *OTAM* 7 (1996): 287-318.

¹¹ İbrāhīm Hakkı was the son of Derviş 'Osmān from Ḥasan-kāle, who had devoted his life to the teachings of his şeyh, İsmā'il Fakrullāh in Tillo. Derviş 'Osmān had married Hanīfe Ḥātūn from the neighboring village of Kındığ and left İbrāhīm Hakkı to his mother's care while he assimilated to a "saintlike" life in the company of his şeyh. İbrāhīm Hakkı was also introduced to this path of knowledge by his father early in his later teen years in Tillo. Although Mehmed Süreyya noted İbrāhīm Hakkı's death as 1772/3, it is believed to have been in 1780: see the introductory notes of Durmuş and Kara, vol.I, 13-61, and Mehmed Süreyya, *Sicill-i Osmani* 3 (İstanbul: Tarih Vakfı Yurt Yayınları, 1996), 764. Kınalı-zāde, on the other hand, was the son of Emrullāh Efendi (d. 1559), who was an established kadi in Damascus and Aleppo. Continuing the tradition of his predecessors, Kınalı-zāde studied in the most renowned madrasas of his time, serving as a kadi in Damascus, Cairo, Bursa, Edirne, and Istanbul, after which he was appointed to the post of *kāzıasker* of Anatolia. He died in 1571/72: Koç, 1-6, and Süreyya, 1, 262. The educational backgrounds of these two men and their sophisticated linguistic execution are apparent in the texts under scrutiny.

can also be observed; for example, İbrāhīm Ḥaḳḳı's approach showed a slightly less moralizing manner. This could be explained in part by the different kinds of books they were composing. On the one hand, Ḳınalı-zāde's is an ethical treatise, whereas İbrāhīm Ḥaḳḳı's is an encyclopedia that also treats similar issues related to the conduct of family life and marriage. For instance, although he was a strong advocate of women's total submission and servitude in marriage, İbrāhīm Ḥaḳḳı's advice to husbands specifically projects marriage's significance for him as a union of companionship, love, and mutual respect. In contrast, Ḳınalı-zāde's approach to this institution is marked by his view of women as profligate, weak, and suspicious beings prone to cause men unnecessary disdain if they were not properly contained. Thus, his recommendation is the confinement of women to the household. The emphasis on the importance of men not acting out of love and compassion toward his spouse projects his apprehension with regard to women because Ḳınalı-zāde ultimately finds women's companionship threatening.

Determining the discrepancies between the sharī'a-based normative legal paradigms in the context of marriage and their actual practice in the everyday lives of Muslim men and women of Istanbul is a challenging task given the nature of our main source, the sicils.¹² Nevertheless, by taking into consideration the cultural context of the

¹² It is thanks to the work of a new generation of "sicilologists"—as Hülya Canbakal refers to sicil researchers in the introduction to her study of seventeenth-century Ayntab—who stressed the importance of a twofold reading of the court records, that a more substantial perspective on the execution and practice of law and customs was made possible. These new studies have developed a critical approach that enabled the prospect of gleaning what is beyond the actual text. This twofold approach is initially concerned with the relationship between the court and the recording of proceedings, and secondly with the dynamics between the court and its actual social context, in Hülya Canbakal, *Society and Politics in an Ottoman Town: Ayntab in the 17th century* (Leiden: Brill, 2006), 13. For a detailed discussion of this issue see Ze'evi, "The Use of Ottoman Sharī'a Court Records," 35-56; Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (New York: Syracuse University Press, 2006); idem, "Text, Court, and Family in Late Nineteenth-Century Palestine," *Family History in the Middle East*, 201-228; Beshara Doumani, "Adjudicating Family: The Islamic Court and Disputes between Kin in Greater Syria, 1700-1860," *Family History in the Middle East*, 173-200; Doumani discusses the importance of a twofold approach to the sicils in his unpublished monograph tentatively entitled, "Kin and Court" (forthcoming, n.d.); Najwa al-Qattan, "Textual Differentiation in the Damascus Sijill:

sicils and comparing the information gathered from the sicils with other sources such as fatwa collections, estate inventories, chronicles, and *sakḳ* booklets (compendiums prepared for court officials), it is possible to acquire insight regarding the way marriage was perceived and experienced by individuals of the capital city during the given period. In what follows, I will give a brief description of the treatment of marriage by the normative texts of Islamic law, while providing examples from the sicils that may or may not be representative of the subjects dealt within these texts. The issues raised will contribute to the discussion of my larger argument that marriage was a status-determining phenomenon that gave women a voice and the capability of being readily noticed in the public sphere. I argue that in late-eighteenth-century Istanbul, the particular visibility of women with regard to marital disputes was reinforced by communal solidarity and cohesiveness. Hence, during this period, I suggest that the increasing public proclamations of ordinary men and women with respect to their private relationship propagated a de facto formalization of the nuptial bond long before the imposition of legal interdictions on marriage by the state.

The treatment of marriage in Ottoman legal discourse as a contract that facilitated the protection of individuals encouraged procreation and the continuity of one's genealogy at the same time it delineated the distinct gender roles. Islamic law established marriage's primary objective as legitimizing and rendering sexual relations licit between a man and a woman. The contract of marriage, '*aḳd-i nikāḥ*', was a binding agreement that preserved

Religious Discrimination or Politics of Gender?" *Women, the Family, and Divorce*, 191-201; Boğaç A. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003). For a discussion of the bibliography on the methods of use of the Islamic court records see the article by Agmon and Shahar, "Shifting Perspectives," 1-19; Fikret Yılmaz, "Boş Vaktiniz Var mı?".

within it a religious implication in addition to its legal content and conditions.¹³ Every dignified and able Muslim male was expected to fulfill the moral task of lawfully taking a wife and providing for her, as well as their offspring. While these were the fundamentally accepted terms of marriage, jurists' opinions regarding the basis of marriage varied. While some legal scholars argued that the contract ensured a man's ownership of a woman, others emphasized the importance of mutual consent by the husband and wife to complete the marriage contract.¹⁴ The issue of ownership implied by the marriage contract was a man's procurement of the right to have exclusive access to a woman. The contract also indicated the couple's mutual obligations toward one another, ultimately distinguishing the status of a wife from that of a concubine. The maxims of matrimony characterized the conjugal couple through the shared duties of husband and wife, emphasizing the continuity of a separate economy within that system.¹⁵ A study on the structure of family based on the sicils of Konya during the first half of the eighteenth century also suggests that the concept of family was governed by a principle of separate

¹³ Stated in one of the most comprehensive treatments of the four legal schools' variations regarding the practice of the Islamic marriage contract, Kecia Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," *The Islamic Marriage Contract*, 11-46.

¹⁴ Judith Tucker provides case examples from the Hanafite jurists Al-Marghinani and al-Hilli addressing the issue of the marriage contract and a husband's ownership of the wife: "Al-Marghinani...states from the outset that 'for us (the Hanafīs) marriage is ownership by way of owning sexual pleasure in a person and this right is established by marriage'," Tucker, *Women, Family, and Gender in Islamic Law*, 41. In Ḥalabī's *Multaḳā al-abḥur*, the marriage contract is defined as permission given to both husband and wife through their consent to matrimony, to enjoy one another's intimacy: İbrahim Halebi, *Mevkufāt Mültekâ Tercümesi*, Ahmed Davudoğlu (İstanbul: Sağlam Yayınları, 2007), 326.

¹⁵ Quraishi and Vogel, eds., *The Islamic Marriage Contract*; see also Azizah Y. al-Hibri, "The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?" *Covenant Marriage in Comparative Perspective*, eds. John Witte, Jr., and Eliza Ellison (Cambridge, UK: William B. Eerdmans Publishing Company, 2005), 182-215. On the impact of political movements and sexual and class domination on the formation of the matrimonial bond, especially in terms of criticism of the contractual conception of marriage presupposing the idea of an individual as an owner, see Carole Pateman, *The Sexual Contract* (Stanford, California: Stanford University Press, 1988), see particularly 19-38 and 168-189.

economy, which in turn gave women a certain kind of leverage regarding the relationship with their husbands, fathers, and other male kin.¹⁶

The sharī'a court records, which shed light on the practice of Islamic law in everyday life, reflect the place of marriage in this particular society. However, it should be noted that one of the major concerns with the use of this source is the problem of representation. The court records reveal the level of agency practiced by women to some degree, but only those cases that were brought to court by claimants appear in the registers. Cases that were resolved and negotiated outside of the court were not always registered, and hence they were not recorded.¹⁷ To understand the nature of marriage's meaning in a particular society, observing the legal discourses alone would be misleading. For a more balanced insight, it is essential to develop a connection between the application of jurisprudence in the sharī'a courts and the particularities of the actual social execution (to the extent possible) in order to connect law with its historical context.¹⁸ In this

¹⁶ Hayri Erten, *Konya Şer'iyce Sicilleri*, 78-83 and 178-185. While Erten commented that there have not been enough studies on the typology of the family in Anatolia during the Ottoman period for one to draw general conclusions, he suggests two studies that have attempted such an analysis: Orhan Türkdoğan, "Türk Ailesinin Yapısı ve Tarihi Gelişimi," *TDA* 96 (1995): 36-37; Rezan Şahinkaya, "Türk Aileleri Hangi Yönlerden Birbirlerine Farklılıklar Gösterirler," *Aile Yazıları* I (Ankara: AAKBY, 1990): 40-41.

¹⁷ Abacı discusses in detail that the option of amicable settlements outside of court was often employed, however, it was not acknowledged as an alternative to the court's resolution procedure. She argues that even if the conflicting parties reached an amicable settlement, they usually insisted on having their settlement registered in court: Zeynep Dörtok Abacı, "Bir Sorun Çözme Yöntemi Olarak Sulh: 18.Yüzyıl Bursa Kadı Sicillerinden Örnekler ve Düşündürdükleri," *OTAM* 20 (2006): 105-115. For a similar perspective on this issue, see Işık Tamdoğan, "Sulh and the 18th Century Ottoman Courts of Üsküdar and Adana," *ILS* 15 (2008): 55-83; Abdülmecid Mutaş, "Amicable Settlement in Ottoman Law: Sulh System," *Turcica* 36 (2004): 125-140; Aida Othman, "And Amicable Settlement is Best": Sulh and Dispute Resolution in Islamic Law," *Arab Law Quarterly* 21 (2007); idem, "And Sulh is Best: Amicable Settlement and Dispute Resolution in Islamic Law," (Ph.D. dissertation, Cambridge, MA: Harvard University, 2005); Mohammed Hadi Hosainy, "Sulh in Eighteenth-Century Ottoman Fatwa Compilations," (master's thesis, Sabancı Üniversitesi, 2007).

¹⁸ Amira El Azhary Sonbol, ed., *Women, the Family, and Divorce Laws*, 4-6. Recent studies on sicils have emphasized the Islamic court's role as a conciliatory space which embodied the juxtaposition of three separate normative domains, namely, the *sharī'a*, *kānun* (sultanic legislation), and *urf* (customary law). In their discussion of judicial and extra-judicial factors that contribute to the processes of mediation, negotiation, and adjudication, Tamdoğan and Ergene have separately concluded that the outcome signified a continuum that

chapter, I argue that the relationship between individuals and the court in judiciary and extra-judiciary spheres, and the court's intermediary position in terms of its participation in the private life of social actors, triggered a transformation in the way the eighteenth-century matrimonial institution was composed and perceived. In order to precisely elucidate the conciliatory role assumed by the court, addressing certain questions was inevitable. By building on Ergene's argument that "the court was more than a venue for litigation, that it was not socially detached, and that it had the flexibility to satisfy both judicial and social concerns," I inquired whether parties who chose to resolve their disputes in court adhered to certain strategies to benefit from such a presumed flexibility. Reading the individuals' usage of the court from this perspective makes it possible to address the central question as to why they decided to go to court.

The Legal Composition of Marriage

Unlike the Catholic sanctification of matrimony, the sharī'a did not consecrate marriage.¹⁹ From its initial moment, matrimony was regarded as a material and

connected the court to its social context: Tamdoğan, Ibid; Boğaç A. Ergene, "Why Did Ümmü Gülsüm Go to Court?"

¹⁹ Donahue has argued that although Christianity treated marriage as sacrament and not a contract, both Islam and Christianity shared common characteristics by deeming important the element of mutual consent, and underplaying ritual and ceremonial practice in marriage: Charles Donahue, Jr., "The Western Canon Law of Marriage: A Doctrinal Introduction," *The Islamic Marriage Contract*, 46-57. Cem Behar, "Neighborhood Nuptials," 538. As indicated by the marriage contract, *'aḳd-i nikāh*, a couple was not considered married until the customary exchange of the offer (*'ijāb*) and its acceptance (*ḳabūl*) officially materialized: Burhān al-Dīn al-Farghānī al-Marghīnānī, *al-Hidāyah ~ The guidance: A Translation of al-Hidāyah fī Sharh Bidāyat al-Mubtadi'* *A Classical Manual of Hanafī Law: Volume One*, Imran Ahsan Khan Nyazee, trans. and commentary (Bristol, UK: Amal Press, 2006), 475, f. 2.

contractual act that took place once the bridegroom and the bride's family agreed on the amount of a marriage portion, the dower (*mehr*), to be paid directly to the bride.²⁰

Marriage's legal validity depended on its public proclamation and the couple's consummation, regardless of the timing of the exchange of dower. Hence, although the dower may be perceived as a signifier of a control mechanism²¹ essentially implying male ownership of the wife's reproductive body parts, the ambiguity of the legal texts determining the time of the dower's presentation to the bride enables us to possibly counter this argument. The decision process of the dower value, the role of the parties involved in this procedure, and the consequences relating to the timing of the agreement on the dower value will be dealt with in a detailed discussion in the third chapter.

The sharī'a did not require marriage to be contracted in the presence of a kadi or imam in order for it to be considered a formally binding agreement. In the Ottoman context the contracting of marriages had to be "indirectly" overseen by a local judge or his deputy.²² According to the *kānūnnāme* of Meḥmed II, a kadi generally received a court

²⁰ "This is based on the hadīth that conveys that *nikāh* has to be proclaimed even if this is done by the beating of drums." *al-Hidāyah*, 476, fn. 8. The pronouncement of a dower value was not a requirement of the marriage contract, since it was considered an obligation of the husband regardless of the timing of the exchange or declaration of the amount: *al-Hidāyah*, 493. The validity of the marriage contract without the proclamation of the dower was asserted in a fetva of the seventeenth-century jurisconsult Abdürrahim Efendi, "Question: If Zeyd married Hind without the utterance of a dower in the presence of witnesses, would the marriage be considered valid? Response: Yes it would," in *Mevkufât Mültekâ Tercümesi*, 153. However, even if a dower was not stated at the time of the marriage contract, it was deemed to be a wife's right.

²¹ Colin Imber's reductionist argument that the dower amount was a signifier of the husband's absolute ownership of his wife's body does not make a persuasive case given that the dower was ultimately the very object which empowered women with the entitlement to dispute the grievances within their marriage: Colin Imber, "Women, Marriage, and Property: Mahr in the Behçetü'l-fetâvâ of Yenişehirli Abdullah" in *Women in the Ottoman Empire*, 83.

²² According to Hıfzı Veldet Velidedeoğlu, the presence of an imām during the marriage agreement was an old custom in Ottoman society: Hıfzı Veldet Velidedeoğlu, *Türk Medeni Hukuku, II: Aile Hukuku* (İstanbul, 1950), 75. According to the published kadi *berāts* (the official licenses issued by the state to kadis) the '*aqd-i nikāh*' was listed as part of the duties of kadis. A few examples of such licenses from the sixteenth and seventeenth centuries were published by Uzunçarşılı in İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin İlimiye Teşkilatı* (Ankara: Türk Tarih Kurumu Yayınevi, 1988), 112-113. For examples of the longstanding practice of obtaining

fee of thirty-two akças for supervising the marriage of a maiden, and fifteen akças for a widow, in order to produce a permit (*izinnāme*) for the marriage contract.²³ In the court records from three different districts of Istanbul, I observed that there is hardly any record of an *izinnāme* in the late-eighteenth century.²⁴ Consequently, it could be argued that after the *izinnāme* was obtained, the couple would directly proceed to the imam for their marriage contract, since the registration of the document in court was not compulsory.²⁵ It

marriage *izinnāmes* see Mehmet Akif Aydın, “Osmanlılarda Aile Hukukunun Tarihî Tekamülü,” *Sosyo-kültürel Değişme Sürecinde Türk Ailesi* 2 (Ankara: Aile Araştırma Kurumu, 1993), 439. Aydın has stated that European travelers’ accounts mention the obligatory obtainment of *izinnāmes* prior to the contracting of marriage in the period following that of Sultan Süleymân. Accordingly, in the eighteenth century, Baron de Tott observed that marriage was made possible through the obtainment of *izinnāmes*, see Ziyaeddin Fahri Fındıkoğlu, “Tanzimatta İçtimai Hayat,” *Tanzimat* (İstanbul, 1940), 649; Aydın, 439; Baron François de Tott (1733-1793), *Memoirs of Baron de Tott. Containing the state of the Turkish Empire and the Crimea, during the late war with Russia. With numerous anecdotes, facts, and observations, ... Translated from the French, in two volumes* (London: G. G. J. and J. Robinson, 1785), 26-29. Even if there were attempts by the state to regulate marriages, it is not possible to contend that such a significant change was made in the history of the marriage institution based on the evidence provided above.

²³ The decree regarding the case-specific court fees was published by İnalçık in Halil İnalçık, “Bursa Şeriyeye Sicillerinde Fatih Sultan Mehmed’in Fermanları,” *B* 44 (Ankara, 1947), 700; see also Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, 112-113; Mehmet Akif Aydın, “Osmanlı Hukukunda Nikah Akitleri,” *OA* III (İstanbul, 1982), 4. Ercoşkun has argued that it was only after the Tanzimat, and in 1844-1845 that the state took action to facilitate the financial burden of court fees regarding the obtainment of *izinnāmes* by establishing the temporary *İmar Meclisleri* (the Council for Redevelopment) which partially enabled the reassessment of these elements, and widely promulgated the control of the state: Tülay Ercoşkun, “Tuna Vilayeti, Yanya ve Konya Eyaletlerinde Evlenmeyle İlgili Düzenlemeler (1865),” *İÜFTD* 52 (2011): 85-102.

²⁴ The case recorded in the Dāvud Pasha (from here on *DPM*) court 25 (H.1209/1796A.D.), 57/3 is the only example that I observed out of forty-two different court registers in the span of ninety years. Mehmet Akif Aydın has verified a few examples of *izinnāme* obtainment in the İstanbul Bâb court during the first half of the eighteenth century: see İstanbul Bâb Mahkemesi 192 (H.1160/1747A.D.)/6a and 59a, and İstanbul Bâb Mahkemesi 193/1a in Aydın, “Osmanlılarda Aile Hukukunun Tarihî Tekamülü,” 438; see also Halit Oğan, *Ankara’nın 1 Numaralı Şeriyeye Sicili* (Ankara, 1964), XXXVI; for an evaluation of the marriage contract as a document, see Aydın Ayhan, “100 Yıl Önce Bir Şer’î Nikâh Akdi,” *Balıkesir Barosu Dergisi* 60-61 (Aralık 1996-Mart 1997), 19.

²⁵ Marriage agreement could also be supervised by an imam if the couple to be wed obtained a special permit, an *izinnāme*, from the kadi stating that there was no legal impediment to their nuptials: Mehmet Akif Aydın, *İslam ve Osmanlı Hukuku Araştırmaları* (İstanbul: İz Yayıncılık, 1996), 9. Aydın states that he studied the notebook of the imam of the Tophane Akarçeşme neighborhood dated 1813-38, in which the imam recorded a number of marriage documents some of which were contracted without the *izinnāme* of a kadi. Unfortunately this document has not been published by the author: Aydın, *İslam ve Osmanlı Hukuku*, 93, f. 31. A few studies have provided examples of *izinnāme* from different periods. For examples from the sixteenth century, see Alaaddin Aköz, “XVI. Yüzyıla Ait Bir Nikâh Defteri ve Bazı Değerlendirmeler,” *İstem* 3 (Konya, 1994): 91-118; Aköz also transcribed 267 *nikâh* registers recorded in the log of the imam of the Sinân-ı Cedîd neighborhood in Beşiktaş provides examples of *izinnāmes* in the post-1875 era: Alaaddin Aköz, *Bir İmamın*

appears that the state at least paid lip service to a need to formalize the recording of marriage contracts, though it did not seek to systematize their registry in this period.²⁶ Among the issued documents mandating the observance of marriage contracts and commanding the courts to reinforce the procurement of a permit for marriage (*izinnāme*), the most noteworthy were the ones that were released in H.1254 (1838-39 A.D.). These four documents commanded the district judges to abstain from overseeing matters regarding marriages contracted without an *izinnāme*.²⁷ It was implicit in these documents that this procedure was already being observed in the *bilād-ı selāse*, which comprised the districts of Üsküdar, Eyüp, Galata, as well as the other Ottoman provinces. The Deliberative Council (*Dār-ı Şūrāy-ı Bāb-ı Âli*) further aimed to control the judges by prohibiting them from supervising those disputes regarding marriages that had been

Nikâh Defteri [Beşiktaş Sinan-ı Cedid Mahallesi] (Konya: Tablet Kitabevi, 2006); a later example of an *izinnāme* was published by İsmail Ünver who analyzed the *izinnāme* obtained for his own parents' marriage in 1920: İsmail Ünver, "Bakire İzinnamesi," *OTAM* 5 (1994): 529-34.

²⁶ The examples provided by Aydın do not suggest an official attempt on behalf of the state, see Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekamülü," 440-441. See also the treatment of the subject of marriage contracts in Gisela Engelshchalk, "Ein Münakehat Defteri Der Jahrhundertwende," *OA IX* (1989): 323-330. The detailed study of Yüksel also provides a wide range of marriage contracts, though they are from the latter half of the nineteenth-century, namely from 1861 to 1906. Yüksel argued that it is almost impossible to determine the extent to which the community abided by the rule of registering marriage contracts, pointing out that the contracts that were registered in the sicils were generally not recorded on the day of the event: Ayhan Yüksel, *Tirebolu Kazası Nikâh Kayıtları (1861-1906)* (İstanbul: Kitabevi Yayınları, 2008), 12; According to Melek Öksüz, those marriages concluded by imams after the procurement of *izinnāmes* might not have been preserved well, since these records were given to the marrying parties: Melek Öksüz, "18. Yüzyılın İkinci Yarısında Trabzon Kadı Sicillerinde Aile Kurumunun Oluşumuna Yönelik Bazı Kayıtlar," *Karadeniz Araştırmaları* 7 (Güz 2005), 49; for a nineteenth-century reference to neighborhood imams' logbooks, Kemal Beydilli, *Osmanlı Döneminde İmamlar ve Bir İmanın Günlüğü* (İstanbul, 2001).

²⁷ "Ba'demā Dersa'âdet'te daḥī 'aḳd-i nikāh vukū'unda İstanbul mahkemesinden izin ve ruḥṣat alınması," (Trans.: The mandate of the kadi of Istanbul commanded the obtaining of a permit and license for marriage contracts from the Istanbul court): BOA, *Hatt-ı Hümayun*, 48373 (H.29/Z/1254-15 March 1839); Following this decree in 1839 there was a mandate from the newly established *Dār-ı Şūrāy-ı Bāb-ı Âli* (the Deliberative Council of the Sublime Porte) prohibiting the neighborhood imams from contracting marriages without the presentation by the marrying parties of an official certificate comprising the permit and marriage license from the Istanbul court: "Ba'demā Dersa'âdet'te daḥī 'aḳd-i nikāh vukū'unda İstanbul mahkemesinden izin ve ruḥṣat ı hāvī tezkere almadıkça maḥallât imamlarının 'aḳd-i nikāh etmemeleleri hakkında Dār-ı Şūrā mazbatası," in BOA, *HAT* 48373A, no. 1251; The same decree was mandated repeatedly through the office of the Istanbul judge, in BOA, *HAT* 48409; and in BOA, *HAT* 48409A.

contracted without a permit. A *fetva* of Yeñişehirli ‘Abdullāh Efendi (d. 1742) deterring judges from overseeing such disputes also indicates that things seem to have changed only after the Tanzimat.²⁸

Although an abundant number of divorce cases were registered in court records, the paucity of any marriage contracts begs the question of whether the decrees were effectively executed. Erten, who studied the court records of Konya between the years 1699 and 1750, identified twenty-one marriage contracts that were registered, arguing that the rarity of marriage contracts in the sicils shows that the neighborhood imams handled the responsibility of overseeing nuptial unions so that there was no apparent need for court mediation.²⁹ According to Erten, spouses registered their marriage contracts in the sicils to avoid any future complications such as the ones regarding dower value and marriage age. A study by Eken found twenty marriage contracts in the sicils of mid-eighteenth-century Antep (1752-56).³⁰ In seventeenth-century Bursa, Abacı also remarked on the rareness of marriage contracts in court registers explaining that a more common practice was the contracting of marriages under the supervision of neighborhood imams after the obtainment of a proper permit from the kadi.³¹ Abacı further argued that our knowledge of

²⁸ “*Mes’ele*: Bir hususu kudat istima etmeyeler deyu taraf-ı sultandan emr-i şerif varid olduktan sonra hilafına emr-i ahar varid olmadan Zeyd-i kadi husus-u mezburu istima ile hukmedip huccet verse hukmu nafiz olur mu? *El-cevap*: Olmaz,” (Trans.: *Question*: If a kadi had a hearing and scripted a ruling, even when there is an imperial decree by the Sultan commanding, “the matter does not need a kadi hearing” and there is no other decree commanding vice versa, would the ruling of the kadi be preeminent? *Response*: No, it would not): Yeñişehirli Ebü'l-Fadl ‘Abdullāh, *Behçetü'l-fetāvā*, Mehmed Fıkhî el-‘Aynî (İstanbul: Dârü't-Tıba‘atı'l-Amire, H.1849/1266), 423.

²⁹ Erten, 49-50.

³⁰ Galip Eken, “XVIII. Yüzyıl Ortalarında Antep’te Aile,” 114.

³¹ Abacı has not given the total number of marriage contracts in the court registers. Instead he supplied two different examples of ‘*aqd-i nikāh*’ in his notes: Nurcan Abacı, *Bursa Şehri’nde Osmanlı Hukuku’nun Uygulanması (17. Yüzyıl)* (Ankara: Kültür Bakanlığı Yayınları, 2001), 142; for a more recent assessment of the issue, see Nurcan Abacı, *The Ottoman Judges and Their Registers, The Bursa Court Register B-90/295 (Dated*

nuptials taking place under the supervision of imams rather than kadis is only due to disputes that arose from conflicts following the marriage contracts.³²

Among the twenty-one cases that Erten observed, he particularly noted one case registered by a non-Muslim couple and two cases indicating at least one of the spouses' prior conversions to Islam. Özdemir, who studied the late eighteenth-century Tokat sicils, observed that as in Konya, non-Muslims used the court to officially register their marriage contracts³³ even though their legal concerns were overseen by their own religious authorities such as bishops and rabbis. Historians who examined the sicils of Rumelia assessed that, unlike the practice in Istanbul and the Anatolian cities whose sicils have been studied, the practice of registering marriage contracts in the sharī'a court seems to have been the norm in the Balkans.³⁴ Given that the family law covering non-Muslims was administered by their own religious authorities and communal bodies, their registry of marriage contracts seems to be a curious phenomenon. Gradeva, in her assessment of the

AH 1081/AD 1670-71, Vol.I (Cambridge, Mass: Harvard University, The Department of Near Eastern Languages and Civilizations, 2007 [2009]).

³² Abacı, *Bursa Şehri'nde Osmanlı Hukuku*, 143, ft. 14.

³³ Özdemir, "Tokat'ta Aile," 1016.

³⁴ Svetlana Ivanova has pointed out the statement of the amount of dower in such contracts in Rumelia during the eighteenth century: Ivanova, 115; Rossitsa Gradeva, "Orthodox Christians in the Kadi Courts: The Practice of Sofia Sheriat Court, Seventeenth Century," *ILS* 4, no. 1 (1997): 52-59. Gradeva mentions the practice of obtaining *izinnāmes* for marriages being common according to the Sofia court records in the seventeenth century, demonstrated by fourteen documents dated 12 Şevvāl and 16 Zilka'de 1026 (13 October and 15 November 1617) preserved in the Saints Cyril and Methodius National Library (NLCM) Oriental Dept., S1, bis, doc. I-XV, 269. Gradeva refers to various studies focusing on the Christian subjects in the kadi court in Rumelia, referencing particularly those cases involving the marriage and divorce of non-Muslims. The secondary material to which she refers gives a good idea of the rich amount of scholarly literature written in Slavic languages: Aleksandar Matkovski, "Gradzhanski brakovi i razvodi na hristijani vo Makedonija in a Balkanskiot Poluostrov vo vreme na turskoto vladeenje" (Civil Marriages and Divorces of Christians in Macedonia and in the Balkan Peninsula during Turkish Rule), *Glasnik na Institutot za natsionalna istorija*, Skopje, (1973), 3, 83-117; Rossitsa Gradeva, "Za pravnite kompetentsii na kadijskija šad na Balkanite prez XVII vek" (On the Legal Jurisdiction of the Kadi Court in the Balkans in the Seventeenth Century), *Istoricheski Pregled*, (1993), 3, 98-119.

role of the kadi court in the lives of the Orthodox Christians in seventeenth-century Sofia, argued that the common usage of the sharī‘a courts by non-Muslims with respect to registering their marriage contracts was possibly due to pragmatic purposes. She observed that cases related to marriage and divorce generally were recorded by women in order to avoid future financial troubles in the aftermath of divorce or death. According to Gradeva, non-Muslim women preferred to contract their marriages in the court of the kadi in order that they would be offered a dower value or precious gifts, a practice that was not stipulated by the laws of their religions.³⁵ Although there is need for more research to form a conclusion regarding marriage and divorce patterns of non-Muslims in the sharī‘a court, it seems that non-Muslims living in the Balkans more commonly registered their marriage contracts for pragmatic reasons to guarantee the future protection of their rights.³⁶ However, as explained in the next chapter, the use of the sharī‘a court by non-Muslims, who wished to avoid the limiting stipulations of their own religions concerning such issues as whom they could marry and how many wives they could have, was also a commonly addressed phenomenon by both the Christian and Ottoman authorities in the eighteenth century.³⁷

³⁵ Gradeva, “Orthodox Christians in the Kadi Courts,” 55-56.

³⁶ Gradeva stated that, “registration of a marriage in the kadi court gave Christian women the opportunity to stipulate an agreed sum of money as dowry. Christians who preferred to get married to obtain a bull from the bishop establishing that there were no (canonical) impediments for the bride and bridegroom to get married. For many Christians this necessitated long, time-consuming, and dangerous journeys,” *ibid.*, 58.

³⁷ Gradeva suggests that the kadi’s verdict was binding and effective, and “allowed them (the non-Muslim attendees) to avoid all Church obstacles to divorce initiated by women and to take advantage of the mehr-i müeccel stipulation of Islamic law,” *ibid.*, 59. Based on the account of İnalçık, Gradeva further reported that “it was only in 1764 that the sultan for the first time authorized the Greek and Armenian patriarchs to punish directly troublemakers in their communities without having to bring the case to the attention of the Porte and at the same time ordered the kadi courts to refuse cases involving dubious marriages,”⁶²; see also Halil İnalçık, “Ottoman Archival Materials on Millets,” *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, eds. Benjamin Braude and Bernard Lewis (New York: Holmes & Meier Publishers, 1982), 440.

Abdullah Saydam, who studied the formation of “informal” marriages in late-nineteenth-century Trabzon, in particular between 1830 and 1844, suggested that it was especially during the rule of Maḥmūd II (1808-1839) that the registration of marriage contracts in sharī‘a courts had begun to be required by the state.³⁸ Saydam identified those marriages concluded outside of state control as in the category of informal marriages. The author emphasized that the state’s initiative in implementing the registration of marriages in this period coincided with the assignment of *muḥtārs*—the civil government officials attached to each neighborhood with the responsibility to conclude marriage permits, among other duties. Given that marriage taxes contributed largely to the financial sustenance of judicial authorities during a period in which the economy was in distress³⁹, it was only rational that the state would encourage the formalization of marriage contracts through judicial supervision.⁴⁰ Although there had been a continuous attempt by legal scholars, such as the prominent sixteenth-century chief jurisconsult Ebūssu‘ūd Efendi, to obtain permits, the absence of both marriage contracts and permission documents from the sicils of Istanbul confirms that the practice was not universally codified or enforced until the early-twentieth-century reforms of personal status laws. The reign of Maḥmūd II presents incomplete but significant steps taken in

³⁸ Saydam, “Trabzon’da ‘Gayri Resmi Nikah,’” 331.

³⁹ During the reign of Maḥmūd II (1808-1839), the decline of the silver content of the gurush reached its lowest point in 1831-32 at 0.5 grams. There were only gradual rises in 1832 with an increase of 0.9 grams, and in 1844 in the amount of 1.0 grams.

⁴⁰ On the issue of court fees and taxes collected from marrying individuals, see Nurcan Abacı, *Bursa Şehri’nde Osmanlı Hukuku*, 144; see also Sehami Pulaha and Yaşar Yücel, “I.Selim Kanunnamesi (1512, 1520) ve XVI. Yüzyılın İkinci Yarısının Kimi Kanunları,” *Bel* CXII, S.16 (Ankara, 1988): 42-50; Ze’evi’s research also offers a number of cases regarding the *nikāh* tax taken as court fees from individuals registering their marriages in the seventeenth century: Dror Ze’evi, “Women in 17th Century Jerusalem: Western and Indigenous Perspectives,” *IJMES* 27 (1995): 163.

that direction, but in my opinion, during the period prior to 1839, the negligence of individuals vis-à-vis the *izinnāmes* indicated that marriage was a practice greatly embedded in the collective culture of Ottoman society and its actual formalization was not a major priority of the state.

The Engagement: The Initial Phase of Negotiation

A variety of Istanbul court records and contemporary *fetva* compilations from the eighteenth century indicate that the state of being engaged, *namzedlik*, was deemed to be an important phase of the parties' negotiation period, although there was not an official requirement regarding its duration prior to marriage. The logic behind a couple's public announcement of their engagement was that they and/or their custodians would make use of this period to become more acquainted with one another and further convey the conditions of the marriage contract. It is evident in the sources that couples actually benefited from this period since some of them opted to add certain stipulations to the marriage contract and others called off their engagements. Although it is not possible to determine the extent of the allowed interaction between the engaged parties, the existence of disputes during the phase immediately preceding matrimony demonstrates that the engagement was a period of negotiation and exchange.

When a couple was to be formally engaged, it was required by etiquette that the groom's family present the bride with valuable gifts such as precious garments, jewelry,

gold, and shoes depending on their economic circumstances. In some instances, it was generally not expected of the bride and her family to return the presented gifts in the event that the engagement was called off, at least it seems so on the basis of the mid-eighteenth-century document discussed below. The custodians' active role in the negotiation process and their expectations from a marital union can be gleaned from the court records to some extent. In a court record dated 1754, a non-Muslim woman, Sukiye, the daughter of Karaboki, presented in court that she had initially promised to wed her daughter, Zafrice, to Pelnezun.⁴¹ Sukiye represented her daughter in court since Zafrice was not of proper age (*bikr-i bâliğa*). Given that it was Sukiye who spoke for her daughter, it seems that she was not accompanied by her father or another male relative. Upon the engagement of the couple, Sukiye accepted from the groom a sum of fourteen pieces of gold as a *namzedlik* (engagement) gift. After a certain period, Sukiye changed her mind about marrying her daughter to Pelnezun; as a result, the groom demanded the return of his engagement gift. Sukiye ended up not returning the gold, and the court ruled in her favor.

In 1754, el-Hâc Ḥalîl, the son of el-Hâc Aḥmed, presented the case regarding his adolescent daughter, Ḥadîce. In his statement, the father asked the court to admonish the husband of Ḥadîce, Muştafâ Çelebi, to return the moveable items⁴² that Ḥadîce brought into their marital household at the time of their engagement.⁴³ As is evident from this record, the bride had brought as her dowry certain valuables and personal property. The court ruled in favor of, el-Hâc Ḥalîl, warranting Muştafâ Çelebi's return of the personal

⁴¹ İstanbul Bâb Maḥkemesi (from hereon *İBM*) 209, 1/3 (H. 1168-69/1754-55 A.D.).

⁴² “bâ defter-i müfredât eşyâ-yı ma‘lûmesini”.

⁴³ *İBM* 209, 1/4 (H.1168-69/1755-56 A.D.).

property to Ḥadīce. The gifts that the groom's family gave the prospective bride at the time of the engagement ceremony generally did not have to be returned; however, the valuables that the bride brought with her upon getting married could always be claimed back if the union was broken off.

In evaluating court documents regarding the breaking of engagements, it seems that the custom of negotiating the bride's dower earlier in the engagement phase was a common practice. In a court case dated 1795, el-Ḥāc 'Abdū'l-kādir, the son of Meḥmed, demanded that the Dāvud Pasha court advise his wife-to-be, Nefīse Ḥātūn.⁴⁴ In his claim, el-Ḥāc 'Abdū'l-kādir suggested that he had negotiated a certain amount for the advanced dower of Nefīse Ḥātūn during the time of their engagement. Nefīse Ḥātūn, who was residing in a separate house owned by el-Ḥāc 'Abdū'l-kādir, refused to go ahead with the marriage, and so el-Ḥāc 'Abdū'l-kādir took the matter to the court in hopes of changing her mind. It is evident from el-Ḥāc 'Abdū'l-kādir's testimony that there had been a settlement among the two regarding Nefīse Ḥātūn's place of residence and dower prior to the marriage contract. Although we do not have further information on whether Nefīse Ḥātūn returned the advanced dower to el-Ḥāc 'Abdū'l-kādir, the document suggests specific details about the conditions of their engagement.

An early-seventeenth-century court record from Istanbul verifies the argument that financial negotiations regarding the marriage alliance were begun as early as the engagement phase.⁴⁵ However, according to this record, the groom could petition for the return of his engagement gifts in cases when the engagement was called off by the

⁴⁴ DPM 25, 92/3 (H.1209/1796A.D.).

⁴⁵ İstanbul Mahkemesi 100 (1612A.D.), 1/16 in Ahmet Akgündüz, *Şer'iye Sicilleri*, 260.

prospective bride. In 1612, Muḥarrem Beğ, son of ‘Abdullāh, presented his case in court in the presence of his fiancée, Belkıs, stating that at the time of their engagement he had given her as part of her advanced dower a colorful *kaftān*⁴⁶ worth 360 akças, a yellow atlas robe worth 360 akças, and a headdress and undergarment worth 120 akças, for a total sum of 840 akças. Muḥarrem Beğ further claimed that Belkıs had run away after the marriage contract, leaving the gifts in her house. The petitioner demanded that the court rule for the return of the aforementioned gifts. When questioned about the matter, Belkıs denied the allegation. It was after Muḥarrem Beğ brought two witnesses who swore to the truthfulness of his statement that the court ruled in favor of Muḥarrem Beğ. The gifts were returned to Muḥarrem Beğ because they were given to the bride as part of her dower.

Financial arrangements were at the center of the marriage. In this regard, even the exchange of engagement presents set the tone for how a nuptial couple was to formulate and negotiate their joint lives. Another entry regarding the return of presents after the cancellation of the engagement is the case recorded in the Harpūt court registers in 1631.⁴⁷ In the dispute between Mevlūd, son of Ḥalīl, and el-Ḥāc Muṣṭafā, son of Sefer, Mevlūd stated: “I was formerly engaged to Fāṭma, the daughter of el-Ḥāc Muṣṭafā, for six years. Since it was not possible for me to marry Fāṭma, I took back from her the gold ring and the three-gurushes fee for a dress I bought for her. After she returned the goods, I no longer have any claims on her, and she can marry whomever she desires.” The statement of Mevlūd was approved by el-Ḥāc Muṣṭafā and recorded in the sicil. In the Istanbul court records from the mid-eighteenth century to the early-nineteenth-century, I did not come

⁴⁶ A caftan is a luxurious embroidered robe.

⁴⁷ Harput Mahkemesi 181, 4/2 (1631 A.D.), in Akgündüz, *Şer’iye Sicilleri*, 261.

across a sizeable number of cases regarding the ending of engagements. Most cases in the registers concerned the advanced dower and its return to the bridegroom in the event of the cancellation of the marriage contract. The small number of cases possibly indicates that these issues were generally resolved among the couples and their families without the need to resort to court.

Custodians and Consent

The marriage contract could take place at the initiative of legal custodians (*velī*) or proxies (*vekīl*) when the marrying parties were not present or were younger than the lawful age. In Ottoman Hanefi practice, the '*aḳd-i nikāh* required the presence of two Muslim male witnesses, who had to be free and mentally capable adults, or two female and one male witness.⁴⁸ Matrimony occurred when the two parties mutually declared their wish to marry.⁴⁹ Neither of the parties had to be present at the signing of the marriage

⁴⁸ Regarding the issue of women as witnesses in court, see Svetlana Ivanova, "The Divorce Between Zubaida Hatun and Esseid Osman Agha," Women in the Eighteenth Century," *Women, the Family, and Divorce Laws*, 124. In the *Neticetü'l-Fetâvâ* and *Fetâvâ-yı Feyziyye*, the issue of witnesses is addressed in a number of fetvas. One such example is: "Question: If Zeyd says to Amr 'I married off my young daughter, Hind, to your young son, Bekir, and Amr states that he accepts this offer on behalf of Bekir without there being any other witnesses than Amr's two elder sons, Bekir and Halid, would this marriage be valid? Response: Yes, it would" in Çatalcalı Ali Efendi, *Fetava-yi Ali Efendi ve fetava-yi Feyziye* (Dersaadet : Şirket-i Sahhafiye-yi Osmaniye Matbaası, H.1324 [1906 or 1907]), 37.

⁴⁹ Gotthard Jäeschke, "Türkiye'de İmam Nikāhı," *Ord. Prof. Sabri Ş. Ansay'ın Hatırasına Armağan* (Ankara: Ajans-Türk Matabaası, 1964), 11. In the *Behcetü'l-Fetâvâ* the non-requirement of a judge's presence in the marriage contract is specified as such, "Question: If Hind, from a certain town, married herself to Zeyd in the presence of witnesses without there being a judge, would this marriage be valid? Response: Yes, it would," Ebü'l-Fadl 'Abdullāh Yeñişehirli (d.1156/1743), *Behçetü'l-Fetavā ma'an-nukul*, ed. Mehmed Fıkhî el-Aynî (İstanbul: Dârü't-tubâati'l-âmire, 1849/1266), 51.

document in the event that an agent represented them.⁵⁰ Although age was not among the binding stipulations of a legitimate marriage contract, it determined whether it was necessary for custodians to present their consent to the union.⁵¹ According to the *shari‘a*, a female was considered to be eligible for marriage (*balīge*) circa the age of nine and a male (*balig*) at twelve, based on the supposition that girls mature earlier than boys.⁵² Unlike other legal schools, in Hanefism a minor woman was supposed to be represented by a custodian/guardian, who gave his consent and handed her over to the care of the husband.⁵³

⁵⁰ According to Bilmen, if a man was to send a letter to a woman saying “I married you”, and the woman read this letter to witnesses, claiming “I married myself to him”, or if she told the witnesses “so and so wrote a letter saying he married me, and you are witnesses to my acceptance of his offer”, then the marriage would be considered licit and contracted: Ömer Nasuhi Bilmen, *Hukukî Islamiyye ve Istılahatı Fikhiyye Kamusu*, II (İstanbul, Bilmen Basım ve Yayınevi, 1967-69), 17. For the treatment of the form and tense of offer and acceptance in terms of ensuring the certainty of the marriage contract, see *al-Hidāyah*, 475; Saydam has illustrated the case of Ulve who had been married through the initiative of an agent, without her own consent. In the case presented in court by Muştafâ, son of Ahmed, son of İsmâ‘il Beğ, who claimed to be Ulve’s lawfully-wedded husband, Muştafâ stated that Ulve was refusing to “give herself” to him as his wife. Their marriage was contracted by Muştafâ’s father and Ulve’s brother acting as their proxy, for a dowry of 5,000 akçes. Unfortunately since this interesting case is obscured by Saydam’s indiscrete account of it, it is impossible to know what Ulve is specifically referring to when she denies the allegations. Upon her disavowal, Muştafâ provides four witnesses to confirm that they are married. Hence, Saydam interprets this case as Ulve’s brother having contracted the marriage without her consent. And since she was a minor, Ulve’s brother had considerable legal power over her life. In a different case, Saydam also observed that the practice of marriage without the marrying party’s consent also applied to males. In his account Hüseyin, who had brought his case regarding his wife Ulve, stated that his father had contracted a marriage for him during his absence for a dowry amount of 300 gurushes, when he was away from home. Hüseyin, who had at first denied this marriage in court, then had decided to accept it. Following his acceptance, he divorced Ulve in 16 November 1842, see Saydam, 343-344.

⁵¹ If a father married his mature (*bikr-i balīge*) and mentally stable daughter (even without her consent) in the presence of one male or two female witnesses, while she is present, the matrimony was considered valid. In this case, the father would be acting both as a custodian and a witness. However, if the adult daughter were not present during the marriage contract, then the marriage would not be considered valid: *Mültekâ*, 330.

⁵² Bilmen, II, 5. This seems to have been the accepted age for girls after the example of the Prophet Muhammed’s marriage to ‘Aīsha. The kadīs were the ones to decide whether a girl was fit for consummation of marriage, ideally having checked with the marrying woman.

⁵³ In case there were no male relatives to become the *veli*, the kadi or his *na‘ib* would have to serve as the woman’s custodian according to the *sharī‘a*: Jäeschke, 12. In her article regarding the critical issue of a woman’s consent in marriage when in conflict with her parents’ consent, Tucker has relied on the sicils of the Nablus and Jerusalem Islamic Courts, as well as contemporary *fetva* collections, see: Judith Tucker, “Questions of Consent: Contracting a Marriage in Ottoman Syria and Palestine,” *The Islamic Marriage Contract*, 123-136.

According to the principal of consent, if a woman was regarded to be an adult she had the legal right to agree or refuse to marry a man.⁵⁴ In cases where tradition did not comply with the legal proceeding, one often chose to avoid seeking a resolution in the local court of the kadi.⁵⁵ This particular point shows that customary practices (*‘urf*) relating to the institution of marriage could at times be inconsistent with the *sharī‘a*. A free woman who was not a minor, and who was considered to be of sound mind, could choose whom to marry on the condition that the husband-to-be was of equal status (*kafā’ah*). In the event that her consent was not solicited due to her minority, a woman had the right to petition for annulment (*fesh*) in front of witnesses upon reaching puberty (*hiyār al-bulūġ*). Some scholars of Ottoman legal history have asserted that those women whose custodians were their fathers or grandfathers could not petition for an annulment in court.⁵⁶ However, my assessment of the court records of the late-eighteenth century has

⁵⁴ An example of a fetva regarding the issue of women’s consent is, “*Question*: If Hind was married by her custodian and brother, Amr, before she came of age to Bekir’s son, Beşir, who was also an adolescent, and after Hind came of age while Beşir was still an adolescent, would it be viable for Hind to get an annulment in court in the presence of Bekir? *Response*: Yes it would”: *Behçetü’l-Fetâvâ*, 53; Another example for a woman coming of age and her reassessment of her marriage is, “*Question*: If Zeyd is the custodian and uncle of Hind who is an adolescent, and he marries her to Amr who is her equal through the dower he proposes, would it be viable for Hind to annul the marriage once she comes of age? *Response*: Yes it would,” *Behçetü’l-Fetâvâ*, 54; A fetva of Abdurrahim Efendi addresses the issue of consent: “*Question*: Would it be viable for Zeyd to marry her adult but maiden daughter Hind by force (without her consent) to Bekir? *Response*: No, it would not”: Abdurrahim Efendi, v.1, 161. Another instance of the woman having her say in the matter of her marriage is addressed in a fetva of ‘Alî Efendi: “*Question*: If the adult Hind marries herself to her equal Amr with the pronouncement of a dower amount, would Hind’s father, Bekir, have the right to annul the marriage claiming that he did not give her permission? *Response*: No, he would not,” in *fetava-yi Feyziye*, 38; “The *nikāh* of a sane and major freewoman stands concluded when it is with her consent, even if the *walī* (her guardian) did not undertake this contract. The basis for permissibility, according to *Zāhir al-Riwāyah* (the mainstream ruling of the Hanafī school) is that she has undertaken an act that pertains to something that is purely her personal right, and she possesses the legal capacity to do so being sane and in possession of discretion. It is for the same reason that she can carry out transactions in wealth and possess the right to choose a husband. The *walī* is asked to undertake her marriage so that she is not characterized as being immodest. Thereafter, according to *Zāhir al-Riwāyah*, there is no difference between a husband who is equal in status to her and one who is not, however, the *walī* has the right to object when the husband is not equal in status,” *al-Hidāyah*, 491.

⁵⁵ Behar, 537.

⁵⁶ Aydın, 27; Schacht, “Nikāh,” *EI2*.

proven that women, upon coming of age, often appeared in court revoking their marriage irrespective of their custodians' concurrence.⁵⁷

In order for marriage to take place, certain stipulations were compulsory. The observance of these requisites was separated into four groups by the Hanefi school, namely: agreement/ unity (*in 'ikād*), veracity (*siḥḥāt*), execution (*nefāz*), and exigency (*lüzūm*).⁵⁸ The sharī'a legally recognized the equality of status (*kafā 'ah*) as necessary in *nikāh*. The primacy of equal status was always articulated for women whereby they were not expected to marry someone whose social status and financial means were inferior to theirs. Clearly, there were instances in which the gap between discourse and actual practice occurred. Conversely, a man could easily be married to a woman of lower status than his since he was the one responsible for arranging cohabitation and, therefore, would not have been affronted by her rank in society. By the same token, it was accepted that an elite woman was not compatible with a man of lower means, and, therefore, she would not be content with what he had to offer in terms of cohabitation and living standards.

⁵⁷ Ze'evi has also assessed in the records of seventeenth-century Jerusalem that a woman, upon reaching puberty, could act according to her own will and refuse to remain in the marriage that was arranged for her by her father or guardian prior to becoming a consenting adult: Dror Ze'evi, "Women in 17th-Century Jerusalem," 163. Jennings made a similar assessment in his evaluation of the Kayseri court's records, see Ronald E. Jennings, "Women in early 17th Century Ottoman Judicial Records," 78. Although not exactly an example about annulment of marriage, the record dated 1748 in the Dāvud Pasha court is an interesting case regarding consent: 'Āyşe, daughter of Aḥmed was to be married by her father to Yunūs, son of Hüseyn, regardless of her refusal of the marriage. After evaluating her request to call off the engagement, the court ruled in her favor preventing the marriage from taking place: *DPM* 25, 7/5.

⁵⁸ Aydın, 17-18.

The Economy of Marriage

The prospect of the marriage contract brought into view other factors such as a woman's right to ownership, her place in the social and judiciary spheres, and her inclusion in the distribution of inheritance, which will be thoroughly discussed in the following chapters. An important aspect of the act of marriage in Islamic law is that while the bride was transmitted into the care of her new husband, this did not imply the transfer of her material wealth and property to him. In other words, whatever the wife brought into the marriage was hers alone and her husband had no legal power over her property without her consent. The notion of a joint economy within marriage was not in effect unless the nuptial couple made a different arrangement. The sources demonstrate that shared ownership of property by couples was common; however, this could only be the case if both the husband and the wife had agreed to it. This aspect of the law gave women a certain security and leverage within marriage. As will be argued in the following chapters, women's rights to own property enabled them to negotiate their demands both in marriage and in divorce. Madeline Zilfi has explained that women's transfer of property to male kin or siblings could have stemmed from their need for moral support and good will. According to this argument, women traded their property in exchange for the possibility to receive moral support and shelter from their relatives in the future. Zilfi suggested that this voluntary relinquishment frequently corresponded with benefits in other aspects, especially with regards to marital arrangements.⁵⁹

⁵⁹ Madeline C. Zilfi, "Elite Circulation in the Ottoman Empire: Great Mollas of the Eighteenth Century," *JESHO* 26 (1983), 238. See also Annalies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," *A Social History of Women and Gender in the Modern Middle East*, eds. Margaret Lee Merriwether and Judith E. Tucker (Oxford: Westview Press, 1999), 162-6.

Ömer Demirel, who evaluated twenty-seven sicils and 1,096 estate inventories of early-eighteenth-century Ankara, analyzed the quantitative information preserved in these sources, looking at the connection between certain characteristics such as social milieu, family structure, profession, religious affiliation, and ownership of property.⁶⁰ Although the limited evidence provided by these sources made it nearly impossible to specify the number of persons who lived in a household during this period, Demirel attempted to draw some important conclusions about the demographics of the Ottoman family in this region. Among his most significant observations were: 97% of estates belonged to individuals who lived in the city and only 3% of them belonged to those who lived in villages; the average number of children in Muslim families was 2.4 while the average for non-Muslims was 2.7; the fact that 12% of the married men were polygynous was a high number when compared to the findings of Barkan and Harkort; of all the polygynous men, the two who had four wives had contrasting estate values—one in the amount of 1,729 gurushes and the other 131 gurushes; and 80% of polygynous men had estates valued less than 1,000 gurushes.⁶¹ While these findings were important for enhancing our knowledge of the Ottoman family, the seeming disregard of data concerning women left many unanswered questions. A more comprehensive study focusing on estate inventories of eleven Anatolian cities during the period between 1550 and 1850 by the same author and his colleagues brought to view the radical difference between the urban and rural family structures, illustrating that the predominant family formation in the cities was the nuclear

⁶⁰ Ömer Demirel, “1700 - 1730 Tarihlerinde Ankara'da Ailenin Niceliksel Yapısı.”

⁶¹ Ibid.; See also Ömer Lütfi Barkan, “Edirne Askerî Kassamına Ait Tereke Defterleri”, *TBD*, III/5-6 (Ankara, 1993), 14; Klaus Liebe Harkort, *Buirage Zur Sozialen und Wirtschafticnen Lage Bursas am Anfangdes 16. Jahrhunduts* (Hamburg, 1970), 303.

family.⁶² However, this survey also omitted a subcategory regarding women apart from listing the number of estates left by them. In another study that analyzed 250 estate inventories recorded in Antep during the years 1752 to 1756, Galip Eken showed that the number of women who individually owned property was comparable, if not equal, to that of men.⁶³

When the married couple jointly owned property, each had claim to their respective share as individuals and were free to use it as they wished. An exemplary case is the proceeding concerning Emīne Hātūn and her husband, İbrāhīm Yazıcı. In February 1757, Emīne Hātūn presented herself in court stating that she was selling her share of the female slave (*cāriye*), ‘Ümmiye, whom she jointly owned with her husband, İbrāhīm. ‘Ümmiye was “a twelve year-old, blue-eyed, blonde-eyebrowed, Muslim convert of Georgian origin.” Emīne Hātūn declared that she would sell her shares to her husband İbrāhīm. A settlement was reached when İbrāhīm Yazıcı paid a sum of 120 gurushes directly to Emīne Hātūn in return for a full ownership right over the female slave, ‘Ümmiye, daughter of ‘Abdullāh.⁶⁴ Another example among numerous similar transactions is the case of Hanīfe, daughter of el-Hāc Meḥmed. She had inherited fourteen parts (*sehms*) of a thirty-two-part estate that was a component of the Būlbül Hātūn endowment. In court, Hanīfe Hātūn registered the sale of half of her shares to her

⁶² This study focused on a sample number of sicils with respect to estate registers of Ankara, Kayseri, Konya, Sivas, Amasya, Adana, Antep, Diyarbakır, Edirne, Manisa, and Trabzon. A sample of 1350 estate inventories dating from the latter half of the sixteenth century to the earlier half of the nineteenth century was deciphered. Among these inventories, 18% belonged to women, both Muslim and non-Muslim. Demirel et al., “Osmanlılarda Ailenin Demografik Yapısı,” 101.

⁶³ See Table 5 in which he has compared the value of men and women’s estates, Eken, 120.

⁶⁴ *Ahī Çelebi Mahkemesi* (from here on *AÇM*) 206, 79/4 (H.1169-70/1756-57A.D.).

husband, es-Seyyid Mehmed Çelebi, who paid her sixty gurushes.⁶⁵ In the sicils that I examined for information on the selling of moveable and immovable property, I observed that there were a large number of cases in which the sale and exchange of property between spouses were settled. The spouses' registration of the exchange of property among each other might suggest a maneuver on their part to circumvent some regulations so that they would not lose their property. This topic will be examined in detail in the final chapter.

According to Islamic law, a husband was accountable for the upkeep of the household as the primary caretaker of his wife and children. The marital support that the husband had to provide was considered an allowance (*nafaka*) for childcare, as well as the main source of livelihood for his wife. The amount of maintenance that a man was legally bound to bestow on his immediate family depended on his income, social status, and his wife's status. Hence, the *nafaka* was determined during the time of the marriage contract, particularly taking into account the necessities of the wife and the resources of the husband.

One of the most distinct ways in which one can decipher the economy within marriage is the instance of divorce, a topic that will be discussed in detail in the next chapter. Through an evaluation of the disputes and negotiations regarding divorce cases, it is possible to reach a comprehensive understanding about the economy of the family, especially with respect to the role of women's involvement and agency regarding the issue. Given that divorce is the instance when the foundation of marriage, the sharing of wealth and property, can be widely contested by the separating individuals, there is significant emphasis on what is brought into the marriage and taken away at its

⁶⁵ Ibid, 5/5.

disintegration by the involved parties. As Yossef Rapoport explains in his study of marriage and divorce in medieval Islamic society, one of the primary resources of economic independence for women was the dowry/trousseau, which functioned as a form of “pre-mortem inheritance reserved exclusively for daughters.”⁶⁶ The trousseau, a lifetime assurance for women throughout marriage, divorce, and widowhood, was under her exclusive rights to owning and disposing of it. The estate inventories and court records reveal that the items of a trousseau could range from jewelry, coins, gold, textiles and other valuable fabrics, and farm animals to immoveable items such as an orchard, and even shares in a house. Hence, there was no limit to the amount of wealth that a woman could bring into marriage. In fact, it seemed that the more wealth a woman possessed outside of marriage, the more secure she was from the undesirable consequences of a possible divorce.

The Contract of Marriage and Estate Inventories

As discussed above, in the past few decades scholars of sicil research have shown that the marriage contract was registered in court in the Ottoman Balkans and the Arab provinces. Given that this was not a legal requirement, and especially not for non-Muslims, this practice was possibly due to customs.⁶⁷ The extreme rarity of marriage contracts in the sicils of Istanbul, however, was rather curious. It seems possible that

⁶⁶ Rapoport, 6.

⁶⁷ Ze’evi, “Women in 17th-Century Jerusalem,” 163; Rossitsa Gradeva, “Orthodox Christians in the Kadi Courts,” 52-59; Abdullah Saydam, 331; see also Judith E. Tucker, “Marriage and Family in Nablus,” 165-179.

marriages were contracted by local imams by the permission of the kadi. Consequently, this might be the reason for the lack of marriage contracts in the Istanbul sicils that I analyzed. This lack of representation in the sources makes it impossible to determine the answer to such fundamental questions as how and where marriages were contracted, what kinds of stipulations were included in a marriage contract, what was the age of each nuptial couple, and who was present during the drafting of the contract. Given the paucity of marriage contracts in the sicils, the very few references to them in the estate registers were exceptionally remarkable. In the 264 estate records (*muhallefât*) dating from H.1196 (1781-82 A.D.) to H.1250 (1834-35 A.D.) that I analyzed, there were six entries that cited the deceased's marriage contract.⁶⁸ In all of these entries the deceased were males. Each entry comprised a listing of the items in the deceased's estate with their prices, as well as loans and debts, and the dower value of the spouses as it was generally recorded in this manner. Given that, of the 106 entries that were of married individuals, only six included information regarding the marriage contract, its citation was obviously not routine in these inventories. Furthermore, the references to marriage contracts were written as the first-person accounts of the wives of the deceased and were noted in the margin of each estate inventory.

The main reason for the spouses' registry of the information regarding the marriage contract seems to be to secure their dower amount from the estate of the deceased. As will be elaborated on later, women were to receive the second portion of their dower from their deceased husbands' estate. In addition to the deferred portion of the dower, women would also receive their share of the estate as a spouse of the deceased.

⁶⁸ BOA, *Bâb-ı Defteri, Başmuhasebe Muhallefat Halifeliği Kalemî Defterleri* (from hereon *D.BŞM.MHF*), inclusive of the years H.1196-1250/ 1781-1835 A.D.

Since this was the routine legal procedure, why these five women opted to include a note regarding their marriage contract was rather intriguing. A close examination of these entries revealed that this was a strategy by these women to secure their shares in the face of possible confiscation, or wrongful possession, of their legal entitlement by other heirs.

The first of these entries was the probate inventory of Gemici Hüseyn Agha, son of ‘Abdullāh.⁶⁹ In the entry, recorded on August 14, 1826, his wife, Ümmügölşüm, daughter of ‘Abdullāh, stated that Hüseyn Agha had married her in the house of Hanīfe Hātūn located in the ‘Arabacı Bāyezīd neighborhood on December 20, 1822. By mutual consent, the contract was agreed upon with Hüseyn Agha’s promise of sixty-seven gurushes as her deferred dower. Ümmügölşüm’s recitation of the marriage contract was confirmed by two male witnesses, one of whom was in the same profession as the deceased. At the risk of an awkward translation, I prefer to give a literal rendering of this exceptional marginal note in which Ümmügölşüm said:⁷⁰

The wife Ümmügölşüm, daughter of ‘Abdullāh, who is present stated: I married myself to the now deceased Gemici Hüseyn Agha mentioned below, on the fifth day of Rebī‘ulāhīr 1238, in the house of Hanīfe Hātūn located in the ‘Arabacı Bāyezīd

⁶⁹ BOA, *D.BŞM.MHF*.d. 13409-12.

⁷⁰ The witnesses were Gemici Emīn, son of Yūsuf, and Sefā ‘Ahmed, son of ‘Alī. As Hüseyn Agha also carried the title Gemici, which was a designation for his profession, he seems to have been a mariner. In all the entries that included a statement of verification of the marriage contract, the witnesses did not happen to be related to the claimants. A similar observation by Cem Behar in his assessment of marriage contracts recorded after 1864 in the Kaşap İlyās neighborhood in Dāvud Pasha strengthens this point. Behar stated that, “in a large number of cases the witnesses were in no way related to the marrying couple but were present as a matter of pure formality. Some witnesses’ names recur in such a strikingly large number of marriage contracts that it is impossible to believe that these people were bona fide witnesses of a legal contract. It is highly unlikely that they attended because they had a significant relationship with all of the couples on the nuptial agreements of which their name appears, or even that they knew them personally.” Cem Behar, “Neighborhood Nuptials,” 545; on the relationship between witnesses and litigants in court, and the actual role of witnesses see the article by Hülya Taş, “Osmanlı Kadı Mahkemesindeki ‘Şühudü’l-Hal’ Nasıl Değerlendirilebilir?” *BİLİG* 44 (Kış 2008): 25-44.

neighborhood in İstānbūl for a deferred dower of sixty-seven gurushes. And he accepted to take me as wife.

According to the document, the couple had married exactly three and one half years before Hüseyn Agha's death. The couple did not have any children when Hüseyn Agha died. Apart from the two individuals to whom Hüseyn Agha owed money, he had no other claimants to his estate except for his wife. Although the total value of his estate was not registered in the document, there were two petitions by his creditors. 'Alī Agha, who was a trustee of the Gemici-başı Meḥmed Agha waqf, made a claim in the presence of the chief inspector (*başbāḳīkulu*)⁷¹ that the deceased had borrowed a total of 230 gurushes in the beginning of August of the same year from the waqf. Fāṭma Ḥātūn, daughter of Meḥmed, who was a resident of the 'Arabacı Bāyezid neighborhood, was the second person who claimed that the deceased had borrowed from her sixty gurushes on October 13, 1825. The witnesses to these creditors' claims were two Muslim males who belonged to the *arabacılar taifesi* (carriage drivers' guild). It is important to note that the witnesses to Ümmügülsüm's testament were not the same individuals. It appears that Ümmügülsüm's intention was to secure the payment of her wifely share and delayed dower in the face of threats posed by the individuals from whom her husband had borrowed. The claims of individuals to whom her husband owed a large amount of money seem to have alarmed her. Hence, her mention of the marriage contract was a way of assuring that she received what was rightfully hers. Hüseyn Agha had borrowed the 290 gurushes only a few months before he passed away. Perhaps he had fallen ill and needed the money for his treatment. Thus, his wife's testament could have been a strategy on her

⁷¹ The *başbāḳīkulu* was the chief inspector who intervened when tax revenues were delayed and made sure collections were made on time.

part to retain her share of the inheritance, knowing how much he owed to these individuals. Unfortunately, since the record only listed the value of the debts of the deceased, it is not possible to assess the total value of his estate.

The second entry that included a reference to a couple's marriage contract was the one regarding the estate of *Ḳapūcu Muṣṭafā Agha*, son of 'Abdullāh.⁷² The estate inventory was registered on August 24, 1826. The document stated that *Muṣṭafā Agha* had died far, or perhaps estranged, from his wife *Emīne Ḥātūn*, daughter of *İbrāhīm*, and was a resident of the *Küçük Āyāsofya* neighborhood at the time of his death. His wife was his sole inheritor since the couple did not have any children. *Muṣṭafā Agha* also did not have any other relatives or kin as heir. The deceased was a warder/gate keeper, possibly in the palace. According to his probate list, the total value of his effects, which consisted of household items, was 236 gurushes. It seems that *Muṣṭafā Agha* owed a certain *Yūsuf* fifty-two gurushes, which was granted to him after the drafting of his inventory. In the margin of the document was a record regarding the marriage contract of *Muṣṭafā Agha* and *Emīne Ḥātūn* which had taken place in the deceased's own house in the *Nerdübanlı Mescid* neighborhood, on August 26, 1825. *Muṣṭafā Agha* had passed away exactly one year from the date of his marriage. Unlike the previous case, the reference to the marriage contract was written in the third person. At the time of the marriage contract, he had promised *Emīne Ḥātūn* a delayed dower of seventy-one gurushes. Consequently, *Emīne* was to receive both the deferred dower of seventy-one gurushes and her share of 22.5 gurushes from his estate as his spouse.

The fact that *Emīne*'s marriage contract was recorded in the third person instead of her own voice is possibly due to her absence from the assembly of probate registration.

⁷² BOA, *D.BŞM.MHF*. d. 13409-15.

Since she was not with her husband at the time of his death, living perhaps in his household near the aforementioned neighborhood, she most probably was not a part of the registration process. In the estate records analyzed, there were three other entries in which the spouses lived in separate houses, which could imply estrangement. However, since none of the records included marginal notes such as the marriage contract, which would enable us to determine the presence of the spouse at the registration process, it is impossible to assess whether it was a common practice to document a deceased's probate inventory in the absence of his spouse. However, it is possible to claim that even if the spouses were separated or estranged, they still were legal heirs to one another unless they were divorced.

The following entry in the *muḥallefāt* regards the estate of Süleymān, son of ‘Abdullāh, who was a resident of the Bāyezīd Agha neighborhood near Topkapı.⁷³ The entry was registered on August 31, 1826. According to it, Süleymān died while he was living away from his wife, Ḥābībe, daughter of Süleymān, son of ‘Ömer Agha. She had it noted in the margin of his estate record that they had contracted their marriage in the beginning of July of the previous year. Ḥābībe's account of their contract was scripted in the first-person:

I have married myself to my husband, the
aforementioned deceased, on the first day of Zilhicce of the
previous year, for a deferred dower of fifty-one gurushes. And
he accepted to take me as wife.

A year later, after her husband, whose profession is not mentioned in the record, passed away, Ḥābībe was trying to secure her income from his estate. Among the effects

⁷³ BOA, *D.BŞM.MHF*.d. 13409-22.

left by Süleymān were a watch that cost thirty-five gurushes and a few inexpensive clothing items that cost about twenty-one gurushes. His wife, Ḥābībe, was to receive one gurush as her spousal share and a deferred dower of fifty-one gurushes. She had two Muslim male witnesses to support her claim regarding the dower. At the end of the record, it states that Ḥābībe was granted the sums collected from the sale of her husband's effects in the amount of fifty-two gurushes since the deceased had no other heirs.

The probate inventory of Süleymān shows that, even though he died while away from his home, his wife was present at the drafting of his estate. Although the document does not state where his wife resided, or where their marriage contract took place, perhaps it was easy for her to commute to the site where the estate was recorded. It seems that Ḥābībe's presence during the deciphering of the estate inventory made a difference. Perhaps Ḥābībe wanted to eliminate the possibility of other legal heirs taking what was rightfully hers, or she was afraid of possible confiscation by the Public Treasury. She was able to secure her dower and spousal share. Out of a total of fifty-six gurushes in the estate, Ḥābībe managed to secure the entire sum minus the cost of procedural fees.

In the three entries discussed above, the marriage of the spouses lasted between one to four years. In these short-lived marriages, the spouses were living apart from each other either for reasons of estrangement or due to their occupational and monetary circumstances. It seems that these circumstances might have affected the couples' decision to procreate. Even if it was not a conscious decision per se, perhaps due to the fact that they were married for only a short period of time and lived apart from each other, they were unable to have children. Unfortunately, the limited data in the estate records does not permit a clearer view regarding this subject. Nevertheless, some of these six

documents provide information about the marriage contract such as the place and date of a couple's marriage, the amount of dower they agreed on, and the number of children they had.

Out of the six entries incorporating marriage contracts, the longest duration of marriage was that of 'Alī Agha, son of 'Abdullāh and Ḥavvā, daughter of Meḥmed. The couple had wed approximately twenty years before the registration of the estate inventory on July 29, 1828. 'Alī Agha was a resident of the Derviş 'Alī neighborhood near the Drāgoman district. The couple's marriage had taken place in the house of Ḥācī İsmā'īl Agha, located in the Feṭhiyye neighborhood. According to this contract, her husband had promised a delayed dower of fifty gurushes to Ḥavvā. The value of the effects of 'Alī Agha, which mainly consisted of clothing items, added up to forty-one gurushes. Since the total of his estate was less than the delayed dower amount, his wife was granted only forty-one gurushes instead of her dower of fifty gurushes. Perhaps Ḥavvā, who was probably aware of the insufficiency of her husband's funds, had intended to inherit the entire estate. For this reason, she might have been adamant about the inclusion of the marriage contract, which made a reference to her dower. Since Ḥavvā's case is the only example in which the value of the estate was less than the spouse's deferred dower, it is not possible to suggest that all wives under similar circumstances would act in the same way as Ḥavvā. As in the other entries with this specific reference, she also provided two male Muslim witnesses to confirm her testament. Accordingly, Ḥavvā was granted the total sum accumulated from the sale of her husband's estate.

The entry regarding the estate of Tātār 'Alī Agha, son of 'Osmān, of the Ḥorḥor neighborhood, also contained a marginal record about his marriage to his wife who was

residing elsewhere at the time of his death.⁷⁴ The inventory recorded on August 12, 1830, listed the total value of his estate at 353 gurushe. In the marginal note recorded in the first-person voice of the deceased's wife, Hūdā, daughter of Aḥmed, it is stated that the couple had been married for three years before 'Alī Agha's death. Hūdā was to receive her previously promised delayed dower of fifty-one gurushe and her spousal share of 124 gurushe from the estate. Since they did not have any children, there were no other heirs mentioned in the inventory.

In the final entry referencing a marriage contract, the estate of es-Seyyid 'Alī, son of 'Abdül'azīz, was registered on October 31, 1826.⁷⁵ According to the record, the sole heir to 'Alī was his wife Maḥbūbe, daughter of 'Abdullāh, and they did not have any children. Es-Seyyid 'Alī was a resident of the Hāce Ḥayreddīn neighborhood, and he was living away from his wife when he died. The total value of 'Alī's estate was 1,476 gurushe. 'Alī's effects mainly consisted of a few clothing items, household items and special objects, and a few valuable objects made of gold. His wife, Maḥbūbe's share from the estate was 279.5 gurushe, which did not include her deferred dower.

Maḥbūbe's very interesting account of their marriage contract was scripted in her own words in the margin of the document. On one side of this marginal note, another note that probably referred to Maḥbūbe described her as, "medium height, light-colored eye-browed, one-eyed (*yekçeşm*).” She said:

The wife, Maḥbūbe bint-i 'Abdullāh, who is present,
stated “The deceased purchased me from Çerkes Ḥasan. While

⁷⁴ BOA, *D.BŞM.MHF.d.* 13480-7.

⁷⁵ BOA, *D.BŞM.MHF.d.* 13411-20.

he owned me as a cāriye, he released and manumitted me from his possession on the seventh day of Rebī'ülevvel 1242. After this, he took me as wife, for a deferred dower of 250 gurushe, and consummated the marriage (*duḥūl idüp*). Since I am his lawfully wedded wife and heir, I request my share from his estate.

29 Rebī'ülevvel 1242

This record is exceptional for a number of reasons, the first and most evident one being that it was composed by a slave woman, who was demanding her rightful share. Her testimony seems to suggest that her husband, es-Seyyid 'Alī, had purchased her from Çerkes Hasan. Although there is not much information regarding the relationship of Maḥbūbe and Çerkes Hasan, it is possible that he was a slave merchant trading in Istanbul.

⁷⁶ Although when he decided to marry Maḥbūbe, 'Alī had manumitted her, the marginal note regarding her physical attributes seemed to emphasize her slave-origin. Court records concerning slaves and cāriyes usually first refer to their physical traits such as the color of eyes, eyebrows, complexion, and hair, as well as listing their unusual characteristics. In the case of Maḥbūbe, we are informed that she is a light-complexioned person of average height. However, what is curious is that she is referred to as *yekçeşm*, which implies that she only had one functioning eye. Given that the physical attributes of a slave were probably one of the determining factors in their purchase, it is rather difficult to assess the reason why a wealthy man such as es-Seyyid 'Alī's bought and married

⁷⁶ Madeline C. Zilfi points to the demographics of the white slave trade in the late-eighteenth century: "The flood of Circassian slave-migrants into Ottoman Europe, Istanbul, and Anatolia in the 1850s and 1860s produced a European-tilted racial breakdown, at least for those decades," in *Women and Slavery*, 133. Suggesting that freed slaves had the opportunity to make use of compatriot networks in the urban setting, Zilfi points out, "...that they could do so is evidenced by the ethnic clustering that characterized labor patterns in Middle Eastern cities... In the eighteenth and nineteenth centuries, Georgians and Circassians could be found everywhere on the social ladder... Mehmed Hüsrev Pasha (d.1855), who started as a palace-reared slave and ended as admiral of the fleet and grand vizier, brought up and placed into office some forty to fifty slaves, most of them fellow Circassians," 135.

Maḥbūbe. The answer to this question becomes even more intriguing when one remembers the short length of the marriage between ‘Alī and Maḥbūbe, which took place only twenty-two days before his death. If more information was provided on the actual amount of time that passed between ‘Alī’s purchase of Maḥbūbe and their marriage, it would possibly shed more light on how to interpret their relationship and the data in this inheritance record.

In her statement, Maḥbūbe had it recorded in the first person that her deceased husband had married her on October 9, 1826, for a delayed dower of 250 gurushes. Another aspect unique to this example is that she mentioned her husband’s consummation of the marriage with her. Given her slave background and recent manumission, it is possible that Maḥbūbe was providing this information to rule out any possibility of her slave-status being restored. As in the previous cases, she also provided two male Muslim witnesses who testified to the truth of her statement. It appears that the couple remained married only for a few weeks until the death of ‘Alī. Perhaps he knew that he was ill and wanted to manumit his slave before his death. It seems that ‘Alī also wanted to give her a certain amount of security and protection by making her his wife. This way, Maḥbūbe would automatically receive benefits such as the dower and her spousal share after his death. By the deed of manumission, ‘Alī performed an act of charity and compassion, which was meaningful as he neared the end of his life.

Marriage, Household Servants, and Slaves

Domestic servants and household slaves appear to have been a part of family life in upper-middle-class households in Istanbul.⁷⁷ Although considered to be property, slaves frequently seemed to become members of the household. Regarding her visit to the slave market, “Yesèr Bazâr”, the English traveler, Miss Julia Pardoe, wrote about the place of slaves in perhaps too uncritical and romanticized a manner:

There is always a painful and a revolting association connected with the idea of slavery, and an insurmountable disgust excited by the spectacle of money given in exchange for human beings; but beyond this, (and assuredly this is enough!) there is nothing either to distress or to disgust in the slave-market of Constantinople. No wanton cruelty, no idle insult is permitted: the slaves, in many instances, select their own purchaser from among the bidders; and they know that when once received into a Turkish family, they become members of it in every sense of the word, and are almost universally sure to rise in the world if they conduct themselves worthily.⁷⁸

Although some cases in the sicils regarding slaves’ manumission prior to their masters’ death seem to demonstrate the kind of master-slave relationship idealized by Pardoe with regard to the assimilation of slaves to the family in their new households, this approach was in no way universal, especially when one considers the court cases regarding slaves impregnated by their masters.⁷⁹ In the seventeenth and eighteenth

⁷⁷ For more information on slaves as household workers: Halil İnalcık, “Servile Labor in the Ottoman Empire,” *Studies in Ottoman Social and Economic History* (London, 1985): 25-52; Halil Sahillioğlu, “Slaves in the Social and Economic Life of Bursa in the late 15th and early 16th Centuries,” *Turcica* 17 (1985): 43-112, reprinted in idem, *Studies on Ottoman Economic and Social History* (Istanbul, 1999), 105-174.

⁷⁸ Miss Pardoe (Julia), *The beauties of the Bosphorus, Illustrated in a series of views of Constantinople and its environs, from original drawings, by W. H. Bartlett* (London: Virtue and Co., [1855?]), 129.

⁷⁹ Zilfi observed that, “As property, slaves were calculated into the estates of deceased owners and distributed to heirs. Given the partible character of Islamic inheritance, each of several heirs might inherit a fraction of a

centuries, the ownership of slaves was largely practiced among the Muslim elite and the upper-class population of the city.⁸⁰ Sources have revealed that slaves were more than just a commodity for their owners.⁸¹ For instance, by marrying their masters or other non-slave individuals and inheriting from their patrons, they developed rooted relationships within their network.

Cases involving domestic servants and slaves occurred regularly in court records and estate inventories. In the sicils, household servants, who were not necessarily slaves, generally appeared as claimants in lawsuits concerning the payment of their wages.⁸² As

slave. Selling, re-commoditizing the inherited slave, was often a necessity. The deceased's possibly beloved slave was thereby turned into ready cash," Madeline C. Zilfi, *Women and Slavery in Late Ottoman Empire* (New York: Cambridge University Press, 2010), 145. This and a few other aspects such as personal ties and loyalty might have been reasons for masters' manumission of their slaves prior to their death. Hence, given the routine appearance of such acts of manumission, one could argue that it was only expected that emotional ties formed between masters and slaves through living in the same household. However the widespread fugitiveness of slaves in this period suggests other reasons existed for the manumission. See İnalçık, "Servile Labor," 81 and Ehud R. Toledano, *Slavery and Abolition in the Ottoman Middle East* (Seattle and London: University of Washington Press, 1998), 54-80; See also Gökçen Alpkaya, "Tanzimat'ın Daha Az Eşit Unsurları: Kadınlar ve Köleler," *OTAM* 1 (1990): 1-10; İzzet Sak, "16. ve 17. Yüzyıllarda Konya'da Kölelik Müessesesi," (master's thesis, Selçuk Üniversitesi Sosyal Bilimler Ens., 1987).

⁸⁰ Using the data from the studies of Öztürk and Jennings, Zilfi makes this assessment, pointing out in particular that Christians and Jews also owned slaves despite prohibitions regarding their ownership. However, Zilfi maintains that non-Muslim slaveholders were far fewer than the slave-owning Muslim population, 145. For an assessment of these numbers in seventeenth-century Istanbul, see Said Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri: sosyo-ekonomik tahlil* (Beyazıt, İstanbul: OA Vakfı, 1995), and in the late-sixteenth century and early-seventeenth century eastern Mediterranean (especially Cyprus), see Ronald C. Jennings, *Christians and Muslims in Ottoman Cyprus and the Mediterranean World, 1571-1640* (New York, 1993).

⁸¹ For the treatment of the subject in detail, see Toledano, *As If Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven, Conn., 2007); and see Y. Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800-1909* (London, 1996).

⁸² Such was the case presented in court by a certain Hasan Agha, son of 'Alī, a resident of the Sarraç Doğan neighborhood, who stated that he was to receive a total value of 103 gurushes from the estate of the Kereste Emīni (a steward of timber tradesmen) el-Hāc Osmān Agha, son of 'Abdullāh, who had recently passed away. In his testimony, Hasan Agha claimed that he had been in the service of (*hıdmetinde olmak*) the deceased for a long time, and that he was to receive twenty-eight gurushes from the *kaşşām*, and twenty-five gurushes as his wage as a servant, and an additional fifty gurushes which was bequeathed to him in the deceased's will. The administrator of the deceased's bequest agreed to grant Hasan Agha's due share from el-Hāc Osmān Agha's estate, in AÇM 206 (H.1169-70/1756-57 A.D.), 78/2.

for slaves, entries regarding manumission, *‘utk*⁸³, and sale registration were found frequently in the sicils.⁸⁴ The most important court cases concerning slaves were without a doubt *hürriyyet da ‘vāsi* (the pursuit of a claim to free status), which released a slave from being the property of their master. More often than not, the established relationship between a master and a slave generally continued even after the emancipation of a slave.⁸⁵ The elite household provided the freed slave a sense of security, which was perhaps impossible to experience elsewhere. As an indication of the regard and loyalty they felt for their former masters, some slaves continued working for their master as household servants even after they were emancipated, perhaps also because that was the most practical and convenient thing for them to do compared with other options.

In the probate inventory registers, there were eight entries out of 264 that made a reference to slaves as items in the estates of the deceased.⁸⁶ One of the cases that mentioned slaves involved a master marrying his own slave.⁸⁷ There was only one case in

⁸³ The term *‘utk* designated a slave’s being or becoming free. Another definition for it is a being or becoming safe from pursuit.

⁸⁴ The registration of a master’s manumission of their slave was common in this period, perhaps to avoid the possibility of the slave’s running away. The suit registered in the Aḥī Çelebi court regarding the manumission of the Croatian slave, Yanoş, son of Yorgi, dated November 1706, is also an example of a European intervening in the process, which will become much more frequent in the nineteenth century: “The reason for this verdict is our slave, Yanoş, the son of Yorgi, a Christian from Croatia who is tall and has fair eyebrows, hazel eyes, and a blond mustache. We have agreed on his value to be 300 gurushes and received the stated amount from his translator, Kantic the Austrian, and gained possession of this sum. As of this day we state here that we have no relations and expectancies from the aforementioned slave. Written on the third day of the month of Şa‘bān, H. 1118 (1706),” in Karl Jahn, *Türkische Freilassungserklärungen des 18. Jahrhunderts (1702-1776)* (Napoli: Istituto Universitario Orientale di Napoli, 1963), 30-31.

⁸⁵ It has been argued by Toledano that most manumitted slaves chose to remain in the household and continue serving the family in the latter part of the nineteenth century: Ehud R. Toledano, *Slavery and Abolition*, 67.

⁸⁶ These were BOA, *D.BŞM.MHF*.d. 13411-20, *D.BŞM.MHF*.d. 13539-2, *D.BŞM.MHF*.d. 13539-8, *D.BŞM.MHF*.d. 13539-9, *D.BŞM.MHF*.d.13480-8, *D.BŞM.MHF*.d. 13480-9, *D.BŞM.MHF*.d. 13406-11, *D.BŞM.MHF*.d. 13409-5.

⁸⁷ BOA, *D.BŞM.MHF*.d.13411-20.

which a former slave married another free Muslim after she had been released from the palace service as a slave.⁸⁸ Ümmügülsüm, a former palace cāriye and çerāğ⁸⁹, who had once served in the court of Sultan Aḥmed III (1703-1730) with the name of Cilve, was then married to her later master Meḥmed Şemsed-dīn Beğ, who had manumitted her prior to their marriage.⁹⁰ According to Ümmügülsüm's estate register, her delayed dower was in the amount of 500 gurushes. At the end of her life, her heirs were her husband and son, Meḥmed Nūraddīn Beğ. The record of Ümmügülsüm's estate was registered on December 21, 1781. Given that she was a court servant during the reign of Sultan Aḥmed III, who had passed away fifty years before the recording of her estate inventory, Ümmügülsüm was most probably in her old age when she died. Peirce has argued that such marriages of palace servants prompted the dissemination of the organizational and educational structure of the sultan's household beyond the palace, which eventually infiltrated the social and political foundation of the Ottoman administrative class. Peirce further suggested that since female slaves went through the same kind of strict and sophisticated system of education as male slaves of the palace, their manumission and

⁸⁸ BOA, *D.BŞM.MHF*.d. 12881. There is no record regarding the date of the deceased's manumission.

⁸⁹ The term is defined in Redhouse Lexicon as an apprentice, in Sir James W. Redhouse, *A Turkish and English lexicon*. Another meaning in Şemseddin Sāmī's *Ḳāmūs* is much more relevant to this former slave's post in the harem, for it designated someone who had been excused from service, and is given a stipend to retire at home: "ḥidmetden 'afv olunarak evinde oturmak üzere tekā'üd ma'aşına nā'il olan," Şemseddin Sami, *Ḳāmūs-ı Türki* (İstanbul: Çağrı Yayınları, 1999). The hierarchical system and distribution of tasks within the harem institution is reflected in the *harc-ı hassa* records. According to a document which was mistakenly dated to the 16th or 17th century was brought forth by Leslie Peirce who correctly identified its period to the reign of Maḥmūd I (1730-54). The document included the names and wages of each cāriye who was in the service of the princes. The period of Aḥmed III was when the harem's population was immensely enlarged due to the number of his cāriyes and children. Hence, Ümmügülsüm was most probably one of the numerous cāriyes who served in the harem during this sultan's reign. Peirce has studied the records of *harc-ı hassa* and pointed out that in the mid-eighteenth century there were about 444 slave women in the harem, whose wages were deterred according to their function and rank. These wages varied from five to one hundred akças: Leslie P. Peirce, *The Imperial Harem: Women and Sovereignty in the Ottoman Empire* (New York: Oxford University Press, 1993), 140.

⁹⁰ Peirce, 144.

marriage to palace officials could prove beneficial for these men of status. Accordingly, these former female slaves transmitted their cultivated manners and propriety to their new matrimonial households, which eventually influenced the promotion of their husbands to higher positions in the royal administration.⁹¹

Although the probate inventory does not reveal much else about Ümmügülsüm's marriage to Mehmed Nūraddīn Beg, it is apparent that he was a man with means and had a successful career path.⁹² It is mentioned in the entry that the couple and their son resided in Kızıl Mināre, one of the oldest neighborhoods in the city near Horhor, which implies her respected status given her close ties to the palace. Among the things she left behind was a copy of the Qur'an, quite a few valuable jewelry items, household textiles, silver objects, and items of clothing. The total value of these items was registered as 335 gurushes. Hence, the dower in the amount of 500 gurushes was Ümmügülsüm largest asset. Having been a former slave and a palace servant in the court of the sultan, it is rather unusual that Ümmügülsüm's estate was comparably small.

Slaves retained certain personal rights that were conferred by the sharī'a regardless of their religious affiliation. According to the law, slaves who were Muslims, or converts to Islam, possessed the right to be married and own and manage property. However, certain legal aspects of a slave's authority were delimited. For instance, slaves' financial responsibility, freedom of action especially regarding sexual matters, and all forms of

⁹¹ Ibid. Peirce gives the example of Pilāk Muṣṭafā Pasha who was a palace official in the lower echelons until after his marriage to Şahuban, a former female slave in the imperial harem. Through his marriage, Muṣṭafā Pasha had risen from the rank of Beğlerbeğliği to that of vizier.

⁹² Zilfi has argued that Ottoman dignitaries obtained wives and concubines by way of a close-knit network among the elite households from the sixteenth to the nineteenth century. The female slaves were acquired either as gifts or purchases from one household to the other: Zilfi, 168. One might conclude that this network possibly allowed for the circulation of slaves who had solid references, making them a much preferable commodity.

public and private authority were highly reduced and restricted.⁹³ The restriction to act in the legal sphere was generally assumed to be absolute. Even though slaves could not keep concubines, they were allowed to marry up to two wives. The women whom male slaves married could be of free status, *hürr*, but they could not be patrons of the slave. In the case of female slaves, they could marry free men of higher status including their masters.⁹⁴ In both of these circumstances, a slave had to have the permission of his/her master to contract a marriage.

Regardless of their age and designated duty in the household, female slaves were accessible to the sexual exploitation of their patrons and capturers.⁹⁵ Hence, how the ownership of concubines affected the unity in marriage is an important question that should be addressed in the future. Since female slaves had the potential to become the legal wives of their patrons, they must have been perceived as a threat to the actual wives

⁹³ Robert Brunschvig, " 'Abd," *EI2*.

⁹⁴ Halil Sahillioğlu, 121: "Non-marital relations between the owner and the female slaves who were his property, gave rise to a number of legal consequences. In the event that a concubine became pregnant, she came under the provisions of the law which protected her upon the death of her owner. She would remain her owner's concubine while he was alive. But, upon his death, if she proved by two witnesses that she had her master's child or if the heirs recognized the child, she became free, like other women that are free by birth. Under these conditions the child became an heir to his deceased father, and if he was young, he had a right for support. While the owner lived, contracts of the type made with other slaves could also be made with the *müstevlide* (a slave being a mother), since she retained her status of female slave. Should master so desire, he could free her to marry her. Or he could free her, with or without conditions attached. There were those who freed their *müstevlide* on condition that they care for the child for three to seven years, without demanding support. One might also encounter *mükâtebe* on the condition of paying a certain amount of money or serving for a certain term. There was no need of a *tedbir* contract in the case of a *müstevlide*, for she automatically came under the provisions of the law. The sale of a *müstevlide*, however, might be the subject of dispute." Also see Ehud R. Toledano, "The Concept of Slavery in Ottoman and Other Muslim Societies: Dichotomy of Continuum," *Slave Elites in the Middle East and Africa~ A Comparative Study*, eds. M. Toru and J.E. Philips (London: Kegan Paul International Ltd., 2000), 173.

⁹⁵ Relying on a number of sample studies of estate registers, it was suggested by Zilfi that in the late-eighteenth century, female slaves considerably outnumbered their male counterparts who were bought, sold, and living in Istanbul. This increase in the number of female slaves reduced their marketplace value. Zilfi poses the question of whether this abundance of female slaves and additional demand for them as household servants and regular/irregular sexual consorts in this period might be interpreted as reflecting the inherent gender dynamics within the household, Zilfi, 194-95.

of their owners.⁹⁶ As seen in the case of the former palace *cāriye* Ümmügölşüm, the fact that female slaves were entitled to the same amount of dower and alimony rights as free women was most probably very vexing to the wives. In my sample of 264 estate entries, only eight records cited slaves. Female slaves were extant in all the entries, mostly as *zenciyye*⁹⁷ *cāriye*, and only one made a reference to a male slave, namely a *ghulām*. According to this sample, the lowest price paid for a slave was 850 gurushes⁹⁸, and the highest was 4,000 gurushes⁹⁹ appraised for a female slave. The only entry that included more than one slave, one of whom was a male, listed the price of the female slave as 2,000 gurushes and the *ghulām* as 2,500 gurushes.¹⁰⁰

The role of slaves within the household is partially revealed through these estate inventories. While in the six entries slaves were being bought, sold, or inherited, in one entry a slave was listed among the heirs of the deceased. The estate of ‘Abdullāh Agha was registered on December 11, 1826.¹⁰¹ ‘Abdullāh was residing in Damascus when he passed away. His father, ‘Oṣmān Agha, who acted as his agent, and his son, Muṣṭafā, were his sole blood-related heirs. The only other person who inherited from ‘Abdullāh was a female slave, an *ümm-ü veled*, who was by definition the mother of his child. For this reason, the slave was granted seven different items of clothing and household

⁹⁶ Although the appearance of a new concubine must have been a threatening aspect in the free wives’ lives, the law prohibited men from taking on a slave as wife while he was already married to a free woman. Even after they had divorced their wives, men could not marry slave women for the duration of their divorced wives’ waiting period: Bilmen, II, 111-12.

⁹⁷ A female slave of sub-Saharan African origin.

⁹⁸ BOA, *D.BŞM.MHF.d.* 13539-2.

⁹⁹ BOA, *D.BŞM.MHF.d.* 13480-8 and 9.

¹⁰⁰ BOA, *D.BŞM.MHF.d.* 13539-7.

¹⁰¹ BOA, *D.BŞM.MHF.d.* 13406-11.

furniture from the estate. The female slave, whose name was not mentioned in the entry, was most probably the mother of Muṣṭafā. It is apparent from this record that the deceased had neither married nor manumitted his *cāriye*. Nevertheless, by making her his legal heir, he had left a few items to ensure her short-term wellbeing. He might have felt obliged to include her in his estate given that she was the mother of his only child as mentioned in the entry, Muṣṭafā.

In the following two instances, we will see that wives of deceased slaveholders inherited their husbands' slave if they were not manumitted prior to the death of their owners. The first of these instances was registered in the estate inventory of Mühürdār 'Alī Efendi, son of İbrāhīm, a resident of the Debbāğ Yūnus neighborhood.¹⁰² On June 25, 1834, the estate of 'Alī Efendi, who was a seal-keeper to a grandee, was listed as amounting to 28,655 gurushes. Among his long list of belongings was a *zenciyye cāriye* whose worth was appraised as 1,100 gurushes. After the distribution of 'Alī Efendi's property, his wife, whose name was not listed, received the female slave. The second instance of a wife inheriting her husband's female slave is the estate of Erzincānī 'Alī Çavuş, son of 'Abdullāh.¹⁰³ A resident of the Seyyid 'Ömer neighborhood near Küçük Hammam, 'Alī Çavuş, was stabbed to death on his way home on October 30, 1826. Similar to the six cases where a marriage contract is mentioned, he was survived by his wife Hādīce, daughter of Muṣṭafā, who was living away from him. The couple did not have any children, or they were not mentioned in the document due to having passed away prior to their parents. The total value of the deceased's estate was appraised to be 2,599 gurushes. His wife was to receive a quarter of this amount which was 649 gurushes and

¹⁰² BOA, *D.BŞM.MHF.d.* 13539-8 and 9.

¹⁰³ BOA, *D.BŞM.MHF.d.* 13409-5.

seventy-five akças. Ḥadīce's dower of 556 gurushes was considered to be within the value of her spousal share. After the distribution of the estate among the heirs, she also received the *zenciyye cāriye* whose price was appraised as 800 gurushes. The Public Treasury took half of the entire estate left by the deceased. The rest was divided between his wife and Kātip Aḥmed Efendi, who received eighty-four gurushes, and Yusūf Agha, who was granted eighty-eight gurushes. The contents of the chest located in the 'Atik 'Alī Pasha mosque, which was protected by a certain Ḥoca İbrāhīm Efendi, were also handed to Ḥadīce, who received a total sum of 1,008 gurushes in addition to the female slave worth 800 gurushes. Although 'Alī Çavuş's entire estate and the fact that he was a slave owner indicates that he was a well-to-do military official, the fact that Ḥadīce inherited the female slave from her husband seems to imply that the slave was mainly used for domestic service. Even a man of upper- to middle-class means had domestic help in his household. Given that the couple lived apart and had no children, his use of a female slave within the household was a status signifier.

The entry regarding the estate of Emīne Ḥātūn included the purchase and sale of a female slave in Aleppo who was used for household service.¹⁰⁴ The estate inventory of the deceased was registered on September 4, 1830, after she had passed away in her mansion, the Fenārīlī konağ. Her husband, Şemseddīn Efendi, appeared to be her only heir apart from the non-blood-related individuals to whom she owed money. The value of Emīne's estate was one of the largest in the sample of estates, with a total of 66,700 gurushes and five akças. The interesting part of the deceased's inventory was the marginal note dictated by a Ni'met, daughter of Mehmed. It seems from the record that

¹⁰⁴ BOA, *D.BŞM.MHF.d.* 13480-9.

Ni‘met was not a family member but perhaps a family acquaintance of the deceased. In her testimony, Ni‘met stated that her son who was a minor, Meḥmed Rāsım, had inherited from his father, Meḥmed Şefik, a Circassian *cāriye*. Ni‘met had sold this female slave to a certain Yusūf Pasha for 4,000 gurushes four years ago in Aleppo. After the sale was complete, Emīne Ḥātūn’s husband, Şemseddīn Efendi, to whom Ni‘met was probably indebted after her own husband’s death, had confiscated 3,000 gurushes. Ni‘met stated that the remaining 1,000 gurushes were taken by Şemseddīn’s wife, Emīne. Ni‘met demanded from the Public Treasury to be given her 1,000 gurushes from the deceased’s estate. Although it is unclear from the inventory whether Ni‘met managed to recover the amount she demanded, it seems that by bringing in three witnesses, two of whom were female, she was truly adamant about collecting what she believed was hers.

Consequently, the sample of estate registers discussed indicated that these slaves resided with the conjugal couple. Although some managed to become a part of the family after having lived with them for a long period of time, slaves were treated as a shared commodity/property by the married couple. The small sample of cases studied here may not represent an entire urban community. Moreover, these seem to be rather wealthy households. Nevertheless, it offers a glimpse into the private lives of a few families from different affiliations and networks in the city. Speaking on behalf of the sample examined, it is possible to argue that the few female slaves mentioned and listed in these registers were merely utilized for their domestic services. It might be argued that it is not possible to distinguish from the *muḥallefāt* the specific roles played by female slaves within the families who owned them, but having determined that these slaves became the

property of their mistresses indicates their usage as household help. However, there was always the possibility they were sold soon after they were inherited.

Polygyny

In his much-cited sixteenth-century work on ethics and conduct, Kınalı-zāde ‘Alī Çelebi wrote that polygyny should solely, if at all, be permissible to the sultans, for Kınalı-zāde approached the institution of marriage as a union that fulfills the soul and the body.¹⁰⁵ He argued that a man should have only one wife, no matter what his financial circumstances, in order to share the responsibility of life, procreation, and true companionship. Believing that this kind of companionship could only be maintained in monogamy, the author’s judgment on polygyny is also shaped by his views regarding certain women’s lack of intelligence, unwillingness to take on the responsibility of home economics, and ineptitude in the household. Hence, Kınalı-zāde argued that if a man increases the number of women in his house, he will not be rid of disorder, contestation, and disputes which will lead to a very unfulfilling way of living. In the text, the separate roles of husband and wife within marriage are clearly defined by a gender-based differentiation. Correspondingly, women were supposed to accept their husbands as their masters, serve them, and provide for their every necessity. However, Kınalı-zāde

¹⁰⁵ Trans: “And the learned ones have said that marriage to multiple wives is not permissible to anyone other than the sultans, for women are in a position of servitude in their presence. Striving for decency, there is no likelihood of meddling with vice and perpetrating corrupt behavior. And it is better even for them to abstain from polygyny, because a husband in his dwelling is like the soul in the flesh. Thus, there cannot be one soul in two bodies. For this reason, it is not fitting for a man to be a husband in two dwellings. The merit of relinquishing of this practice has been previously referred to by the sharī‘a” from the Turkish version of Kınalızāde Ali Çelebi, *Ahlāk-ı Alâî*, haz. Mustafa Koç (İstanbul: Klasik Yayınları, 2007), 354.

addressed the transformation that had taken over the marital bond. He criticized these changes by stating that with the increased autonomy women could exert over their property and income, they had gained a new sense of self-confidence, which led to women's reigning over their husbands and dominating them.

In her assessment of polygyny, Suraiya Faruqi referred to three different studies focusing respectively on Bursa, Salonica, and Istanbul to delineate the prevalence of its practice.¹⁰⁶ Although the absence of marriage records predating the 1880s makes it impossible to decipher the exact number of polygynous households in Istanbul, the evidence after that period and until the early decade of the twentieth century has shown that no more than two percent of the Muslim population was in such marriages. Although a common theory among historians of the family in the early-modern Middle East was that the practice of marriage to multiple women was restricted to a certain social milieu consisting of men who had high enough means to support each wife, a number of substantial studies on estate inventories have countered this notion.¹⁰⁷ Based on an examination of the probates of males who were either in monogamous or polygynous

¹⁰⁶ Suraiya Faruqi, "Women in the Ottoman World: Mid-18th to Early 20th Century," *EWIC*, ed. Suad Joseph (Brill Online, 2012). Faruqi draws these conclusions by referring to the studies of Meropi Anastasiadou, *Salonique, 1830–1912, Une ville ottomane à l'âge des réformes* (Leiden, 1997); Cem Behar, *A Neighborhood in Ottoman Istanbul: Fruit Vendors and Civil Servants in the Kasap İlyas Mahalle* (Albany, New York, 1993); Alan Duben and Cem Behar, *Istanbul Households: Marriage, Family, and Fertility 1880–1940* (Cambridge, 1991). Gerber's study on early-modern-period Bursa court records should be an essential part of this list, Haim Gerber, *Economy and Society in an Ottoman City: Bursa, 1600–1700* (Jerusalem: Institute of Asian and African Studies, The Hebrew University of Jerusalem, 1988).

¹⁰⁷ According to a letter written by Lady Mary Wortley Montague, wife of the English ambassador in the eighteenth century, polygyny was rarely practiced even among the elite: "Tis true their Law permits them four wives, but there's no instance of a man of quality that makes use of this liberty, or of a woman of rank that would suffer it. When a husband happens to be inconsistent (as those things will happen) he keeps his mistress in a house apart and visits her as privately as he can, just as tis with you. Amongst all the great men here I only know the Tefterdar that keeps a number of she slaves for his own use (that is on his own side of the house, for a slave once given to serve a lady is entirely at her disposal) and he is spoke of as a libertine, or what we should call a Rake, and his wife wont see him, tho she continues to live in his house": Lady Mary Wortley Montagu, *Turkish Embassy Letters*, ed. Malcolm Jack (London: William Pickering, 1993), 72.

marriages, these studies have shown that the practice of polygyny was rare and that it was not limited to, but prevalent within, a single social milieu.¹⁰⁸

A number of studies focusing on a variety of Anatolian cities throughout the span of the fifteenth to the early-eighteenth century are worth mentioning to form a contextual foundation for my findings on late-eighteenth-century Istanbul estate inventories. In his pioneering analysis of sixteenth and seventeenth-century Edirne *'askerî kaşşām* estate inventories, Ömer Lütü Barkan assessed the number of polygynous marriages at seven percent.¹⁰⁹ Hüseyin Özdeğer, in his evaluation of fifteenth to seventeenth-century estate registers of Bursa, has found that only five percent of the inventory-owners who were married had more than one wife.¹¹⁰ In a study comprising 717 estate inventories dated 1670 to 1698 in Bursa, Ömer Düzbakar observed that the proportion of polygynous marriages was eight percent. Of this number, 45.76% of polygynous estate-owners left sums in the range of 0-20,000 akças; 18.64% in the range of 20,001-40,000; 3.38% in the range of 40,001-60,000; 5.08% in the range of 60,001-80,000; and 27.11% in the range of 80,001 akças.¹¹¹ Hence, he maintained that polygynous marriages were not exclusive to upper- and upper-middle-class men. Given the wide and inclusive range that he used to interpret the data, his argument is rather problematic.

¹⁰⁸ The quantifiable data regarding this subject will be addressed in detail in Chapter IV. However, the studies that argued—based on questionable data—that the practice of polygyny was not limited to the upper-class elite are: Demirel, “1700-1730 Tarihlerinde Ankara’da Ailenin Niceliksel Yapısı,” 951; Demirel et al., “Osmanlılarda Ailenin Demografik Yapısı,” 105; Ömer Düzbakar, “Osmanlı Toplumunda Çok Eşlilik: 1670-1698 Yılları Arasında Bursa Örneği,” *OTAM* 23 (2008): 88-89; Said Öztürk, “Osmanlı Toplumunda Çok Evliliğin Yeri”, *Osmanlı V*, ed. Güler Eren (Ankara: Yeni Türkiye Yayınları, 1999): 408.

¹⁰⁹ Barkan, “Edirne Askerî Kassamına Ait Tereke Defterleri”, 13-16.

¹¹⁰ Hüseyin Özdeğer, *1463-1640 Yılları Bursa Şehri Tereke Defterleri* (İstanbul: Bayrak Matbaacılık, 1988), 55-56.

¹¹¹ This quantifiable data is important since it suggests that there was no direct correlation between one’s accumulation of wealth and choice of being in polygynous marriages: Özdeğer, 56.

According to the study of Rıfat Özdemir on Tokat's estate inventories dated 1771 to 1810, the proportion of monogamous marriages was significantly larger—at 84.26%—than that of polygynous ones.¹¹² In his dissertation focusing on Antep's social and economic state from 1700 to 1750, Hüseyin Çınar similarly proposed that the percentage of monogamous married males was 84%.¹¹³ In Zeynel Özlü's work on Antep's estate inventories between 1760 and 1777, the percentage of males in monogamous marriages is given as 91.6%. And finally, in Ömer Düzbakar's study of the Bursa estate registers of the late-seventeenth century, the quantity was 91.8%.¹¹⁴ Of the 106 cases of married individuals in the estate inventories of Istanbul that I evaluated, the proportion of polygynous marriages was only 2.8%.

As in estate inventories, court records of the period also corroborate my argument that polygyny was an infrequent practice. For instance, in the Ahî Çelebi court's records dated 1756-57, out of 380 cases, there were only three that mentioned men who had more than one wife.¹¹⁵ However, this number may not be completely representative, since this phenomenon needs to be studied on the basis of estate inventories rather than sicils. Men in polygynous marriages were bound by the sharī'a to provide equally for each wife, including their dower, maintenance, and inheritance share.¹¹⁶ This condition explains the approach by scholars who have suggested that the practice of polygyny was more frequent

¹¹² Rıfat Özdemir, "Tokat'ta Aile," 993-1052.

¹¹³ Hüseyin Çınar, "18. Yüzyılın İlk Yarısında Ayıntâb Şehri'nin Sosyal ve Ekonomik Durumu," *İstanbul Üniversitesi Sosyal Bilimler Enstitüsü*, (Ph.D. dissertation, İstanbul, 2000), 157-158.

¹¹⁴ Zeynel Özlü, *XVIII. Yüzyılın İkinci Yarısında Gaziantep* (Gaziantep: Gaziantep Büyükşehir Belediyesi, 2004); Düzbakar, 92 (see Table 2).

¹¹⁵ AÇM 206, (H.1169-70/1756-57A.D.). These cases were 8/1, 82/1, and 91/3.

¹¹⁶ Bilmen, II, 117-120.

among the higher ulema and administrative officials in comparison to merchants and artisans.¹¹⁷ The estates of those men who were married to more than one wife were generally in the range of 0-2,000 gurushes except for one estate that was in the 2,000-5,000 range. Given that this information is based on only three cases, it does not provide enough evidence for a conclusion. Another significant issue is that during the eighteenth century in Antep, the dower amounts of first wives and subsequent wives differed, with the first wife allotted the larger amount.¹¹⁸ A similar pattern in the allocation of dower amounts was also observed in the Istanbul sicils and estate inventories of the same period. Nurcan Abacı, who has studied seventeenth-century court records, argued, however, that the records did not contain any information on the dower amounts of the wives who came after the first wife. Abacı explained that this discrepancy was mainly caused by the records' disregard for singling out the order in which a man married each of his wives.¹¹⁹

Sharī'a allowed women the right to apply certain stipulations to the marriage contract regarding their husbands' taking another wife in the future. The case of Faṭmā demonstrates the kind of strategies women adhered to when faced with such an issue.¹²⁰

¹¹⁷ A good example for the polygynous marriages of *ulema* may be seen in the estate distribution of Şeyh 'ül-islām 'Abdullāh Efendi. A resident of Kanlıca in Üsküdar, the chief jurisconsult 'Abdullāh Efendi had passed away on January 28, 1757, leaving behind four wives and four children. His wives, 'Afife, 'Ālīcenāb, Ruḳiye, and Yekṭā were presumably all converts to Islam, which is designated by their specification as "bint-i 'Abdullāh", meaning daughter of 'Abdullāh. When Ruḳiye passed away before she could collect her inheritance share from her husband's estate (*münāsaḳā*), her portion was immediately passed on to her son, 'Abd'ül-vāḥid Efendi. The total of ninety-six parts that comprised the estate of 'Abdullāh Efendi was divided among his heirs as such: Each of his wives received three parts, his son Meḥmed Faḫrullāh Efendi received twenty parts, his other son 'Abd'ül-vāḥid Efendi received thirty-one parts, and his daughters, 'Āyşe Hānım and Ḥadīce Hānım each received fourteen parts. Since Meḥmed Faḫrullāh was reported to be mentally unsound, his legal dealings were carried out by his *vasī* (proxy), his mother 'Afife. The rest of the document concerned the sale of a burnt parcel of land by these heirs to Ogannis *zimmī* for 510 gurushes, in AÇM 206, 82/1 (H.1169-70/1756-57A.D.).

¹¹⁸ Galip Eken, "XVIII. Yüzyıl Ortalarında Antep'te Aile," 114-115.

¹¹⁹ Nurcan Abacı, *Bursa Şehri'nde Osmanlı Hukuku*, 146.

¹²⁰ İBM 209, 19/1 (H. 1168-69/1755-56A.D.).

Faṭmā, daughter of Sulbiye, was represented in court by a proxy, Mollā ‘Oṣmān, son of Muṣṭafā. In the record dated 1756, Mollā ‘Oṣmān stated that according to Faṭmā’s marriage agreement with her husband, Aḥmed Efendi, he had promised to give her 4,000 akças for the advanced portion of her dower, as well as a list of household furniture. However, Aḥmed Efendi failed to provide his wife with the effects agreed to in the contract. In addition, Aḥmed Efendi married a second wife. Presumably, Faṭmā had not included a stipulation in the marriage contract with regard to her husband marrying other women while he was still married to her. Given that the second wife lived in the same household as Faṭmā, she requested that the court notify Aḥmed Efendi to provide each of his wives a separate dwelling. Unfortunately, the record does not indicate the length of time separating the two marriages. Given that the nature of her claims concerned the failure of Aḥmed Efendi to fulfill his duties as a husband, it is feasible to suggest that Faṭmā was completely appalled by his deed. Since she had not taken any precautionary action, her best strategy was to declare her husband to be negligent. The timing of Faṭmā’s complaint about her husband’s failure to provide the advanced dower coincides with his taking a second wife. This strengthens the contention that she was more bothered by the arrival of this woman into what was her territory than his lack of provision of her due effects.

Polygyny directly affected women even after the death of their husbands, given that the estate would be divided among each wife; and if there were any children, each wife’s share would be even further reduced. Thus, the existence of other wives with children meant that there would be less to share among the wives. Hence, polygyny was emotionally and practically not a welcomed prospect for women. The sicils that involve

polygyny usually do not include information on who mothered each offspring. This leads me to argue that no differentiation was made between a wife with more than one child and a wife with only one child. The case presented in court by a non-Muslim (*zimmī*) in the name of Sirafogas, veled-i Agop, regarding the loan credits of the deceased Aḥmed Agha, son of Süleymān, son of ‘Alī, was about inheritance as an indirect descriptive chronicle on polygyny.¹²¹

Sirafogas had lent Aḥmed Agha 1,027 gurushes and five akças, and since Aḥmed Agha passed away, Sirafogas received the loaned sum from the deceased’s estate administrator. According to his testimony, Aḥmed Agha was a resident of the Küçük Hacı neighborhood near the Mūsā Firdevsī kiosk. The deceased had two wives, Emīne, daughter of İbrāhīm, and Ḥavvā, daughter of Meḥmed, as well as four children. There was no information regarding which of his children was from which wife, since this seemed to be inconsequential. Aḥmed had a young son, Ebū Beḡr, and three young daughters named “the other,” Ḥavvā, Faṭmā, and Elīf, who were heirs to the estate. Aḥmed had appointed a proxy as an administrator to his estate to oversee its proper distribution. Perhaps given that he had two wives, he decided it would not be fair to either if he appointed one of them as his administrator. That is possibly the reason he promoted his own brother, Salīḡ Agha, son of the aforementioned Süleymān, to supervise the division of his estate.

Given that each of his children were described as *saḡīr/saḡīre*¹²², it is possible that Aḥmed had married both of his wives (or at least the mother of his children) when they

¹²¹ AÇM 206, 8/1 (H.1169-70/1756-57A.D.).

¹²² The term, used here in the masculine and feminine conditions, designates one’s young age prior to becoming an adult.

were young. It is possible that the reason for his taking a second wife was due to his first wife's infertility. Since the record does not provide any details regarding the value of his property, it is not possible to draw conclusions about his status. As Abraham Marcus emphasized, the honorific title *agha* indicated a certain kind of acclaimed social standing if not a specific one. It is probable, therefore, that Aḥmed belonged to a socially esteemed milieu of merchants, government executives, or military officials.¹²³ It is rather difficult to explain the dynamics of Aḥmed Agha's household from this sicil.

One issue worthy of note was that Aḥmed's wife, Ḥavvā, had been the namesake for his daughter who was referred to as "the other Ḥavvā." It appears that the relationship between Aḥmed's two wives was not as strained as one would expect. The other Ḥavvā was most probably the daughter of Emīne, who honored the second (or perhaps the first) wife of Aḥmed by giving her own daughter the name Ḥavvā. A similarly ironic situation was also observed in the record regarding the estate inventory of Za'frāncı es-Seyyid el-Ḥāc Muṣṭafā, son of 'Osmān.¹²⁴ Za'frāncı Muṣṭafā had three wives, Ḥadīce, Ruḳiye, and the other Ḥadīce. As for his offspring, he had an older daughter from his previous marriage to Emīne named 'Āyşe and two other daughters, the younger 'Āyşe, and Ḥanīfe, from his present marriages. In Muṣṭafā's case, his daughter from a previous marriage had become the namesake for his youngest daughter from one of his most recent wives. While

¹²³ Abraham Marcus, *The Middle East on the Eve of Modernity*, 71. For a contextualization of the different uses of such honorifics as i.e. *agha*, *çelebi*, and their signification of social status and milieu, Mustafa Akdağ, *Türkiye'nin İktisadî ve İçtimai Tarihi (1453-1559)* (1979), 113-130; Bahaeddin Yediyıldız, "Türk Vakıf Kurucularının Sosyal Tabakalaşmadaki Yeri (1700-1800)," *OA III* (1982): 143-164; for a discussion on the use of such honorifics as *seyyid* and *şerîf* and their marriage patterns in the seventeenth century: Demirel et al., 104. Demirel and his colleagues have assessed that 8.77% of polygynous men were those persons carrying the honorifics *seyyid* and *şerîf*, and *derviş* and *şeyh*. For the differentiation of persons carrying the honorifics *seyyid* and *şerîf* in Ottoman society, see also T.W. Haig, "Seyyid", *İA X*, 543; C. von Arendola, "Sharîf", *EI2* (Brill Online).

¹²⁴ BOA, *D.BŞM.MHF.d.* 13450-7.

in certain cases, women's refusal of their husbands' polygynous marriage arrangement was discernable; in others, an element of female bonding was evident. Though wives might have been coerced by their husbands to name children after another wife or her children, it could also be that some wives made this choice to get along and befriend each other. The limited access that women were afforded in the public sphere, when compared to men, increased the importance of any kind of sociability that took place within the household. Hence, in polygynous households, the marital bond joined not only the men and his wives but his wives with one another.

According to the *muḥallefāt*, eight of seventy-three married men and three of thirty-three married women were living apart from their spouses. Given that a significant number of men were working and living away from their marital households, it seems plausible that they would be willing to marry another wife and start another joint life near their place of work. Such were the circumstances of el-Ḥāc Aḥmed, son of el-Ḥāc 'Ömer, who died on March 23, 1757.¹²⁵ Originally a resident of Rize in Anatolia, el-Ḥāc Aḥmed had died while doing commerce in Rumelia. The deceased had two wives, Ümmügülsüm, daughter of 'Abdullāh, who resided with him, and Mülkine, daughter of Meḥmed, who resided in Aḥmed's hometown, Rize. From these two marriages, el-Ḥāc Aḥmed had two sons and three daughters who were all adults. Even if the document does not distinguish which of the children were born to which mother, they were all presumably the offspring of Mülkine. The reasoning for this argument was that the remainder of the record contains a declaration by his other wife, Ümmügülsüm, who claimed her due portion from the estate. Had she been the mother of any of his children, she would at least mention their rightful shares. In this regard, she probably did not have to register her expected share in

¹²⁵ AÇM 206 (H.1169-70/1756-57A.D.), 91/3.

court, since according to inheritance law, her due sum would automatically be granted to her since she was one of the wives of the deceased.

The fact that Ümmügülsüm felt the necessity to present her case in court to testify that she would need to collect her delayed dower of fifty gurushes and her spousal share of 175 gurushes reveals her anxiety about not being recognized as Aḥmed's lawful wife. The deceased's first wife and her five children seem to pose a threat to Ümmügülsüm, whose presence was probably not acknowledged by them. There is also the possibility that the deceased's family in Rize did not know about his second wife, Ümmügülsüm.

Consequently, Ümmügülsüm's testimony was an attempt to secure her share before any of the other heirs could object. In this regard, Ümmügülsüm's addressing her issues to 'Osmān Beşe, who was Aḥmed's estate administrator, shows Aḥmed's farsightedness. Since he did not desire his second wife to become involved with his first wife and children, Aḥmed had decided to appoint someone outside of his family circle to take on the responsibility of overseeing the distribution of his property among his heirs.

It was probable that women in polygynous marriages did not always have strained relationships with each other. A rather unique example of camaraderie among wives may be deduced in the letter that İbrāhīm Ḥaḳḳı of Erzurum wrote to his four wives Firdevs, Fāṭma, Belḳıs, and Züleyhā while he was in Istanbul.¹²⁶ What was extraordinary in this letter was not the fact that its sender had four wives, with whom he apparently had truly loving and intimate companionships. Indeed, it was the fact that the letter consisted of four different notes addressed to each of the wives advising them to be on amicable terms with each other. Hence, it is also probable that the demonstration of camaraderie in the

¹²⁶ İbrāhīm Ḥaḳḳı's compelling letter was published by Gündüz Akıncı, "Erzurumlu İbrāhīm Hakkı Efendi," *Türk Dili: Mektup Özel Sayısı* 274 (Temmuz 1974), 75-77.

letter might only reflect its author's optimistic expectations regarding the relationship among his wives during his prolonged absence. Firdevs, the author's first wife, was given an honorable position in the letter since she was the first one to be addressed. After İbrāhīm Hakkı complimented her characteristic qualities and good virtue, he praised her physical attributes in detail. This was a pattern followed at the beginning of each wife's letter. An exceptional factor in the letter was the implication that two of his wives knew how to read. İbrāhīm Hakkı asked Firdevs the interesting question: "With what do you entertain your heart? Do you read?" and wrote to his youngest wife Züleyhā, "I have been writing and learning new compositions for you... When I return we shall accompany each other in voice and recite songs and books together. Falling in love with God almighty." İbrāhīm Hakkı had created an atmosphere within his marital household where he could have intelligent conversations and intellectual debates with his wives.

The sample of *muhallesāt* was also a substantial source through which certain dynamics in polygynous marriages could partially be deciphered. On September 19, 1833, the estate inventory of Hacı Hâfız İsmâ'îl Efendi, son of 'Osmân, was registered.¹²⁷ The deceased who appeared to be a dignified Muslim, carrying the honorifics of both hâcî and hâfız¹²⁸, seems to have been an affluent resident of the Hacı Hasan neighborhood located in Çırçır.¹²⁹ According to the record, İsmâ'îl Efendi was survived by his two wives, Hanîfe and Zeyneb. The total amount left by the deceased was 4,338 gürushes. Of this amount, his wife Hanîfe, who seemed to be his favorite, received 917 gürushes, while his other

¹²⁷ BOA, *D.BŞM.MHF*.d. 13539-2.

¹²⁸ The term hâcî was an honorific title given to individuals who had done their pilgrimage to Mecca. During this period, however, el-hâc was also used as a title for merchants. The term hâfız designated a man who has learnt or knows by heart the whole text of the Qur'an: Redhouse, *A Turkish and English lexicon*.

¹²⁹ BOA, *D.BŞM.MHF*.d. 13539-2.

wife Zeyneb received only 218 gürushes. This significant contrast between the inheritance shares of these two women supports my former argument that the dower amounts of each wife indicated a hierarchy between them. Among his property, the deceased also owned a female slave of African origin whose purchase price was designated as 850 gürushes. However, neither of the deceased's wives inherited the slave. Instead, the slave girl was bequeathed to Düdükçü Hüseyin Agha, who was probably an individual from whom the deceased had borrowed.

On December 4, 1828, the estate inventory of Za'frāncı es-Seyyid el-Hāc Muştafā, son of 'Osmān, was registered in the *muḥallefāt*.¹³⁰ Originally from the Za'frānbolī's Bolāk district, Muştafā had been a resident of the Muḥācır Aḥmed neighborhood located in Cerrāh Pasha in Istanbul. It is apparent from the record that the deceased had continued trading saffron in Istanbul, which was a local line of business in his hometown. Unlike the other entries examined above, the marital status of Muştafā seemed quite complex. First, it was mentioned in the entry that he had previously been married to Emīne Hātūn, whom he divorced by an irrevocable ṭalāk. Nevertheless, Muştafā was now a man who had three wives, who were Hādīce, daughter of Meḥmed Emīn, Ruḳīye, and the other Hādīce. As for his offspring, Muştafā had an older daughter named 'Āyşe from his previous marriage with Emīne; two other daughters from his present marriages, the younger 'Āyşe, and Ḥanīfe; and two sons, Hüseyin, and Aḥmed. According to the inventory list, of his heirs only the first Hādīce, the daughter of Meḥmed Emīn, and the younger 'Āyşe were mentioned. The rest of the individuals who inherited from him seemed to be absent from the registration procedures. Thus, it is possible to assume that the other two wives of Muştafā and their children lived in his former residence in Bolāk.

¹³⁰ BOA, *D.BŞM.MHF*.d. 13450-7.

It appears that Muṣṭafā's most recent wife was Ḥadīce, since her presence was mentioned in the record. The additional marginal note regarding their marriage contract was probably due to her presence during the composition of the inventory. In this note, Ḥadīce mentioned that they had been married eight years before, agreeing on a delayed dower of 225 gurushes. There were no references to the dower amounts of his other two wives. Another marginal note, which was only partly legible, regarded the asset claim of a certain 'Āyşe, daughter of 'Abdullāh, who stated that the deceased owed her 250 gurushes, and his wife Ḥadīce had witnessed the loan of the sum. This testament possibly explains the reason for Ḥadīce's registration of her marriage contract and dower amount in the estate inventory. In order to secure the proceeds that she would receive from her husband's estate, Ḥadīce had to be firm and adamant about her claim. She also seemed to be aware of her husband's aforementioned debts.

Given the number of children that the deceased had, Ḥadīce's eagerness to have her share recorded illustrates that among Muṣṭafā's wives she was the one conscious of what could work against her advantage. Thus, Ḥadīce had tried to manage the circumstances by using her knowledge of her rights. Although the record does not clarify what each woman received as inheritance, it is conceivable that Ḥadīce's involvement in the recording of the inventory put her at an advantage. As a result, apart from her dower of 225 gurushes, Ḥadīce received a spousal share of fifty-two and one-half gurushes. The same spousal share amount was also granted to the other two wives of the deceased, Ruḳiye and the other Ḥadīce. The female children each received 158 gurushes, while the males were granted 316 and one-half gurushes in accordance with the sharī'a regulation that sanctioned male children received twice the value inherited by female children of the

deceased. Consequently, the 1,267 gurushes and five akças estate left by Muştafâ was distributed in this manner among his lawful heirs.

Another man with two wives, Esîrci Hâcî Yûsuf Agha, son of el-Hâc Hasan, a slave merchant, was a resident of the Bûrgulu Mescid neighborhood in Şehzâde when he died.¹³¹ The probate inventory of the deceased stated that he had two wives. Of these, Emîne, daughter of Hayrî, was the only wife whose name was mentioned in the register. However, his other unnamed wife had given him his two children, Mehmed Efendi and ‘Âyşe Hâţun, who were both living in Belgrade. A marginal note in the record stated that his wife Emîne had lent him five years ago in H.1236/1820-21 A.D., a total of 1,800 gurushes, which she was now requesting from his estate. Emîne’s share from the estate was 1,199 gurushes and her delayed dower portion was 151 gurushes, while the other wife’s dower was recorded as ninety gurushes. Perhaps the other wife of Yûsuf Agha was living in Belgrade along with her children. Given that his two wives received two different amounts of dower, it can be concluded that the one who received the higher amount was his first wife.

In this chapter, marriage, as it was practiced and perceived by individuals in late-eighteenth-century Istanbul, and the doctrines defining it were examined. Considering a diversity of sources comprising court records, treatises on conduct, fetva collections, and estate inventories enabled a comprehensive inquiry of the marital union’s composition, especially with respect to women’s agency and autonomy and towards an understanding of the marriage patterns in this society. These texts alone may not reflect actual practices in their entirety. They are, however, the products of cultural notions and performances relating to marriage and its actual manifestations in society. Based on my analysis of the

¹³¹ BOA, *D.BŞM.MHF*.d. 13411-5 (H. 1242/1827A.D.).

relevant sections regarding good conduct in marriage by Kınalı-zāde and İbrāhīm Hakkı, I depicted a particular mentality which shaped and informed the way marital issues were considered in a specific segment of urban society. I argue that these texts were prone to project a normative perception of marriage essentially informed by the sharī'a and local customs. This approach was ultimately constructed by social realities and region-specific practices and deliberately depicted the agency and role of women negatively within marriage. In contrast to the patriarchal doctrines proclaimed in conduct manuals, women appeared to be empowered by their married status. Hence, a contradictory attitude towards women is embedded within these texts. On the one hand, someone like Kınalı-zāde believed women had no agency and initiative when seeing his surroundings through the normative approach. On the other hand, there are moments when he manages to distance himself from the normative aspect of the text and becomes empirical in his observations. These are the moments when he sees the agency of women. However, as soon as he recognizes this as a fact, he attempts to suppress his realization by classifying women's autonomy as degenerate.

As Judith Tucker explained, "The courts became a refuge of women seeking to mitigate the consequences of culturally entrenched patriarchy."¹³² Marriage seemed to allow women an autonomy and visibility within the public sphere, particularly within the court of the kadi. Through my assessment of factors such as consent in marriage, the economy within the marital union, and the formalization of the marriage contract, I attempt to illustrate that women were directly and actively involved in each of those issues. This aspect defined the way the marital union was established and conceived in

¹³² Quraishi and Vogel, eds., "Introduction," *The Islamic Marriage Contract*, 3.

late-eighteenth- and early-nineteenth-century society. For instance, women's enlightened and uninhibited manners were the principal elements that repositioned preconceived impressions based on gender roles, perhaps allowing for a more egalitarian mindset with regard to the marital bond. In the following decades, the Imperial Rescript of the Rose Chamber of 1839 and the Reform Decree of 1856 were perceived by later observers as attempts to reinstate the former social, jurisdictional and administrative institutions of the state. These studies associated the introduction of new concepts in these edicts as the initial steps taken toward a more egalitarian treatment of all stakeholders in an Islamic contract. Describing the Tanzimat and Islahat Edicts as a breaking point that made change possible may risk an incomplete narrative. Reforms cannot be independent from the cultural factors from which they seek change because those are the dynamics that prepared their emergence.

CHAPTER TWO

The End of Marriage: Patterns of Divorce and the Specialization of the Court System in late Ottoman Istanbul

...The Grand Vizier İbrâhîm Pasha, claiming that diversion is necessary for even the common folk, ordered the assembling of funfairs with swings and merry-go-rounds everywhere including Atmeydanı, the courtyards of the Sultan Mehmed and Bayezid mosques, and Yenibahçe, Yedikule, Bayram Pasha, Eyyüp, Kasım Pasha, Tophâne, Sa'd-âbâd, Dolmabahçe, Bebek, Göksu, Çubuklu, Beykoz, Harmanlık in Üsküdar during the Eid. Men and women comingled; when women got on and off the swings, handsome young men embraced them intimately, holding them in their arms, picking them up, and putting them on the swings. As the women were swinging and singing songs with their pleasant voices, they were unaware that their sashes became loosed, exposing their undergarments. The foolish women were inclined to go to public promenades, some even without their husbands' permission, legitimizing their action by claiming that it was a "general permission" (*izn-i 'âm*). Women forced their husbands to grant them pocket money for these excursions, and if they were declined, they demanded divorce (*talâk*) from their husbands. The deputies of judges in courts favored the wives, believing that they were commissioned to be permissive to women. The deputies caused a disturbance by uttering such words as "Your wife, in her state of womanhood, does not want you. Being the man that you are, can you find it in yourself to still want her?" to humiliate the husbands. The men involved could not say no, lest they accept being cuckolds and thus the initiative for divorce move into the hands of women. There are hardly five women left in any respectable neighborhood in the city who can be called virtuous. This vizier has no esteem for the *ulema*, the pious, the wise, the brave, and the bold.

Şem'dânî-zâde Fındıklılı Süleymân Efendi, *Mür'i't-tevârih*¹

¹Şem'dânî-zâde Fındıklılı Süleymân Efendi *Târihi Mür'i't-tevârih*, ed. Münir Aktepe (İstanbul: Edebiyat Fakültesi Matbaası, 1976), 3-4. The text is my own translation though I also referred to Madeline Zilfi's translation in, "Women and Society in the Tulip Era, 1718-1730," *Women, the Family, and Divorce Laws*, 292-293.

This excerpt is how the eighteenth-century historian, Şem‘dānī-zāde Fındıklılı Süleymān Efendi’s chronicle of the years 1730-77 in Istanbul begins. The passage is a critique of the period that is prior to the one Şem‘dānī-zāde is about to discuss—the era that would retrospectively be referred to as the “Tulip era” (1718-1730)—since his conviction is that the corruption in Ottoman society began with this era. In his book, the author portrays the relaxation of restrictions on the interaction of men and women as the principle threat to the morality of Ottoman society. In his view, men and women who were unfamiliar with each other and mingled openly in public contributed to wives’ disobedience to their husbands and was the foremost challenge to the norms of social conduct. More significantly, Şem‘dānī-zāde’s displeasure with the ultimate sign of the degeneration of the times was caused by what he identifies as shifts in the attitudes of legal officials who became more permissive of women, favoring their needs and privileges over men’s. For him, the regents’ apparent support of wives instead of husbands degrades men, undermining their manhood and patriarchal authority. By stating that ‘the initiative for divorce moves into the hands of women,’ the author implies that there is a threat of men being cuckolded by their wives due to the authorities’ encouragement of women’s rights within marriage. The chronicler also laments the change from divorce being controlled solely by men to the current situation where unrestricted socializing between the sexes and the legal authorities’ partiality to women supported women’s petitions for divorce without seeking their husbands’ approval. Şem‘dānī-zāde voices his discomfort with the way relationships between the two sexes were structured, which he believed resulted from the lenient policies in the age of

Nevşehirli İbrāhīm Pasha. In his opinion, this negligence and permissiveness instigated a disregard of acceptable behavior, changed the behavior of women in public, and led to degeneration of relationships between the genders.

Cābī ‘Ömer Efendi, whose historical narrative comprises the reigns of Selīm III and Maḥmūd II, recited an incident that portrays similar concerns regarding society’s attitudes towards women and divorce—indication that these anxieties resonated among a variety of circles. Cābī’s narrative relates the story of a woman who wanted to divorce her husband:

On October 7, 1808 (H. 16 Şevvāl 1223), a woman appealed with a petition to the Imperial Council to obtain permission to divorce her husband. In her statement she complained about her husband coming home in a drunken state each night and scolding her unbecomingly about the smallest details. She said, “I have taken him to the sharī‘a court once or twice, but he just does not divorce me (*taṭlīk*). I do not want him.” After hearing what she had to say, the grand vizier asked her, “Look here, o woman! Does your husband bring you bread each night?” To which she replied, “Yes he does.” Then he asked her, “I see that even your mantle is rather new, does he ever leave you without garments?” to which she replied, “No”; the grand vizier looked over at the Çavuşbaşısı and the scribes in the Council, and spoke to the woman, “Woman, I will call on your husband to question him. You confirm that he has never left you without garments or in hunger, and still, you do not want him. But if your husband also tells me about your faults and wrongdoings, I will put you in a sack and throw you into the sea. Does your husband take money for wine from you? Did we gather here today to listen to all of Istanbul’s husband-wife quarrels? Beat this woman up!” Upon his command, the *segbāns*² chased her down the stairs of the Council, along with fifteen other women who were there for their own petitions, beating all of them with whips and canes.³

² A division of the thirty-fourth Janissary regiment.

³ Cābī Ömer Efendi, *Cābī Târihi: Târih-i Sultân Selīm-i Sâlis ve Maḥmūd-i Sâni: tahlil ve tenkidli metin*, compiled by Mehmet Ali Beyhan (Ankara: Türk Tarih Kurumu Basımevi, 2003), 236-37.

Şem‘dānī-zāde’s deep concern about the changing times and degeneration of gender relations is expressed in the narrative of Cābī a few decades later. The passage indicates that, although women were given the opportunity to petition any grievances regarding their husbands, the vezir was inclined towards keeping the unity of the marital bond. The woman’s plea for divorce on the grounds that her husband was being verbally abusive when he was drunk was rejected.⁴ The logic behind the grand vizier’s dismissal of this petition seems to have been due to his ideal of protecting the unity of the marriage regardless of its difficult circumstances. Hence, it seems sensible that the grand vizier stressed that the husband had not neglected his duties to provide food and clothing for his wife despite his regular intoxication. The wife’s reasons for divorce did not appear to be sufficient for ending the unity of the family. Consequently, she was told that since she was not the one providing for the house and her husband, she had no right complaining about other marital issues. It was also implied by the grand vizier’s statements that the concerns she openly shared in the Councils were to be kept private, between husband and wife.

These two selections from eighteenth-century chronicles also depict their author’s divergent approaches concerning divorce when initiated by women. While Şem‘dānī-zāde’s perspective projects his unease about the changing equilibrium between the genders in marriage and divorce, Cābī’s reflects a certainty that the male-dominant

⁴ The hanafī school did not consider cruelty grounds for a unilateral divorce at the initiative of the woman, Madeline C. Zilfi, “‘We Don’t Get Along’: Women and Hul Divorce in the Eighteenth Century,” in *Women in the Ottoman Empire*, 282; see also Ongan, *Ankara’nın İki Numaralı Şer’iye Sicili*.

structure in the marital union will continue. In another passage, Şem‘dānī-zāde recounts the story of Abdī Agha, the tobacconist (*duḥāncı*) of Ḥasan Pasha, who was appointed trustee of the foundation of İsmā‘il’s Gate (the site was a crossing on the Danube located in present-day Ukraine).⁵ Formerly a chief inspector (*başbāķīkulu*)⁶ in 1764-65, and the trustee of İsaķçı storehouse, Şem‘dānī-zāde states that Abdī Agha’s misdeeds and ill use of his authority was reported to the Şeyhülislam of the period, Dürrīzāde Muştafā Efendi, by the kadi of Harşova, Muştafā Efendi. After Abdī Agha was executed in Yedikule by order of the Grand Vizier Rāgıb Pasha, his misdeeds came into light. Among his many other crimes, Abdī Agha was known to consent to certain issues as if he were a kadi.

Şem‘dānī-zāde comments:

If a non-Muslim woman decided to divorce her husband because she hated him, she only had to pay the subaşı⁷ five gurushes to acquire repudiation. If the husband intended to bring a lawsuit against the woman, he would be hindered from doing this by beating and reviling. The non-Muslims believed that if a woman paid the subaşı five gurushes then she would immediately be repudiated. If they were affected by this act, they had no choice besides bemoaning and lamenting, for it had become

⁵ For a discussion of place names and the institution of menzilhane in Rumelia during the period of interest see, Colin J. Heywood, “Some Turkish Archival Sources for the History of the Menzilhane Network in Rumeli During the Eighteenth Century (Notes and Documents on the Ottoman Ulak, I)” *Boğaziçi Üniversitesi Dergisi* 4-5 (1976-77): 38-55.

⁶ The *başbāķīkulu* was the chief inspector who intervened when tax revenues were delayed and made sure collections were made on time.

⁷ The term *subaşı* denotes an officer who was in charge of the security and public order of a city. For detailed information see Mücteba İlgürel, “Subaşı,” *TDVİA* 37 (İstanbul, 2009) and Mücteba İlgürel, “Subaşılik Müessesesi,” *JTS* VII (1983): 251-261; for a comprehensive study of the institution of Subaşı: Mücteba İlgürel, “XVII. Yüzyıl Balıkesir Şer’iyye Sicillerine Göre Subaşılik Müessesesi,” *VIII. Türk Tarih Kongresi, Ankara 11-15 Ekim 1976: Kongreye sunulan tebliğler*, vol. 2 (Ankara: Türk Tarih Kurumu Yayınları, 1981): 1275-1281.

impossible for the kadis to prohibit it. Abdī Agha obtained from these illicit deeds approximately 4,000 kuruş for the İsmā‘il waqf.⁸

The preceding chapter outlined those elements specific to the composition of marriage in Ottoman Istanbul during the period in question. Authoritative views on the Ottomans’ treatment of marriage as a fundamental institution recognizing its status-determining character for individuals were expressed as early as the sixteenth century in such works as the treatise on morals, *Ahlāk-ı ‘Alā’ī*, which was still widely popular in the eighteenth century.⁹ As demonstrated in the previous chapter, prior to the reforms of family law in the *ķānunnāme* of 1917, the Ottoman state treated marriage and divorce as private arrangements between spouses and did not mandate their formal registration in court or any other administrative establishment. The virtues of marriage were emphasized through written text, rituals, and traditions. Marriage was the first step in a girl’s adulthood and vested her with more responsibility; divorce prompted her recognition within the legal system and made her publicly visible.

Divorce cases are a major source of information about women’s active participation in court. Divorce was a defining moment in their lives and women’s visibility in court cannot be reduced to their sexualized or domesticized roles since they

⁸ *Şem‘dānī-zāde Fındıklılı Süleymān Efendi Tārīhi* II.A, 70-71.

⁹ Kınālī-zāde Ali Çelebi, *Kitab-ı Ahlāk-ı ‘Alā’ī*, Muhammed Şah b. Zeynelabidin (43 Zilkā‘de 972, 1081/1671 A.D.); Also MS Turk 28 (Houghton Library, Harvard University, undated manuscript), f. 171. The continuous popularity of the work well into the eighteenth century and beyond was determined by its use as a fundamental reference in later works of conduct, as well as abridged forms of the original: see Osmanzāde Ahmed Tâib (d. 1724), *Hülâsatü’l-ahlāk*, Süleymaniye Ktp., Hamidiye, no. 647; Yağlıkçızāde Ahmed Rifat Efendi (d. 1894), *Bergüzâr* (Hanya, H.1291), and Yağlıkçızāde, *Bergüzâr-ı Ahlāk* (İstanbul H.1315 and 1318); see also, Ahmet Kahraman, “Ahlāk-ı Alâî,” *TDVİA* 2 (İstanbul, 1989).

emerge as pious endowers, home and shop owners, guardians, and witnesses in a great number of court disputes.¹⁰ In this chapter, I first present three different categories of divorce as they were commonly practiced in eighteenth-century Istanbul. The thematic discussion of these categories (and sub-categories) will be substantiated by documented examples of court cases. Secondly, I examine the fetvas¹¹ with regard to their instructive role in maintaining proper conduct and show how these fetvas and rulings by kadis served complementary purposes in the execution of the *sharī'a*. Finally, I argue that certain

¹⁰ The aspect of women's legal and public visibility through their usage of the *sharī'a* courts has been addressed by numerous important studies on Ottoman women and the history of the family in the Middle East. It has been to the advantage of Ottoman studies that the pioneering works on this aspect of women's lives have focused on different cities and provinces of the Empire, making it possible to compare differences as well as similarities: Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records"; idem, *Studies On Ottoman Social*; Abraham Marcus, *The Middle East on the Eve of Modernity*; Peirce, *Morality Tales*; Judith E. Tucker, "Ties that Bound," 233-53; Suraiya Faroqhi, "Two Women of Substance," *Festgabe an Josef Matuz: Osmanistik-Turkologie-Diplomatik*, Christa Fragner and Klaus Schwarz, eds (Berlin: Klaus Schwarz Verlag, 1992): 37-56; Haim Gerber, "Social and Economic Position of Women," 231-44; Cemal Kafadar, "Woman in Ottoman and Seljuk Society up to the mid-nineteenth century," *9000 Years of the Anatolian Woman* (Istanbul: Turkish Ministry of Culture, 1993): 192-201; Nelly Hanna, "Marriage and Family in 17th Century Cairo," *Histoire économique et sociale de l'Empire ottoman*, 349-358; Madeline C. Zilfi, ed., *Women in the Ottoman Empire*; Yvonne J. Seng, "Standing at the Gates of Justice: Women in the Law Courts of Early Sixteenth-Century Üsküdar, Istanbul," in *Contested States: Law, Hegemony and Resistance*, eds. Susan Hirsch and Mindie Lazarus-Black (New York: Routledge, 1994), 184-206; Ze'evi, "Women in 17th Century Jerusalem," 157-173; Palmira Johnson Brummett, "Gender and Empire in Late Ottoman 'Istanbul: Caricature, Models of Empire, and the Case for Ottoman Exceptionalism," *Comparative Studies of South Asia, Africa and the Middle-East* 27.2 (2007): 283-302; Agmon, *Family and Court*; idem, "Muslim Women in Court," 126-140; Svetlana Ivanova, "Muslim and Christian Women before the Kadi Court in Eighteenth-Century Rumeli: Marriage Problems," *Oriente Moderno* 18, no. 79 (1999): 161-176; Abdülkadir Yuvalı, "Kayseri'de XVIII. Yüzyıl Sonlarında Kadın'ın Sosyal Statüsü," *I. Kayseri ve Yöresi Tarih Sempozyumu Bildirileri, Kayseri 11-12 Nisan 1996* (Kayseri, 1997): 367-75; Başak Tuğ, "Ottoman Women as Legal and Marital Subjects," *The Ottoman World*, ed. Christine Woodhead (New York: Routledge, 2012): 362-377; Bilgehan Pamuk, "Conditional Divorce in Ottoman Society: A Case from Seventeenth-Century Erzurum," *Bilig* 44 (Winter 2008): 11-122; Yahya Araz, "Kadınlar, Toplum ve Hukuk: 16. ve 17. Yüzyıl Osmanlı Toplumunda Eşleri Tarafından Terk Edilen Kadınlar," *TT*, 6 (246) (Güz 2007- Kış 2008): 61-82.

¹¹ The fetvas I will present are from the eighteenth-century *şeyh 'ül-islām* Ebü'l-Fadl 'Abdullāh Yeñişehirli's compendium *Behçetü'l-Fetāvā*. Mehmet İpşirli explained that the fetva collection of Yeñişehirli 'Abdullāh Efendi was considered one of the most prestigious collections of fetvas in the nineteenth century. This is a significant statement given that Yeñişehirli 'Abdullāh Efendi was the Chief Jurisconsult for twelve years in the eighteenth century, in 1718-1730: Mehmet İpşirli, "Abdullah Efendi Yenişehirli", *TDVİA*, I (Istanbul, 1998), 100-101.

courts had a specialized function regarding the resolution of matrimonial suits and explore how this is reflected in late-eighteenth-century Ottoman society. The comparison of quantitative data concerning divorce in the sicils provides a glimpse into the divorce patterns. The data gathered represents only those who attended the court and cannot be taken as reflective of the whole society. This segmental view, however, can be contextualized in the future by using figures from other regions and periods for a comparative analysis.

Scholars of the sicils previously established the high level of self-representation in and wide-ranging use of the court by women. The percentage of women attending the court in person, and of those who were represented by proxies, varied depending on place and time period. For instance, we can assert that women living in major urban centers appeared in person more frequently than those who lived outside cities because the number of women represented by proxies is relatively close to the number who attended in person (see Figures 2.1-2.3). On the other hand, women living in peripheral towns and the countryside more frequently adhered to being represented by proxies. In addition, the number of cases involving women in the court records of non-urban regions was much lower than in city centers.¹² Istanbul, one of the most densely populated cities

¹² See the article by Kayaalp, in which she compares the rate of women's appearances in court in person to that of their representation by proxies in different regions of the Empire during the late-seventeenth century: Pinar Kayaalp, "The Use of Islamic Court Records in the Study of the Status of Women in Ottoman Society," *American International Journal of Contemporary Research* 2/1 (January 2012): 157-162; Some of the studies by Turkish scholars that have a demographic agenda concerning the family have neglected the issue of appearance of women in estate inventories and sicils. For instance in a study based on the sicils of Ankara in the earlier half of the eighteenth century, Ömer Demirel examined approximately 1096 estate records, without assessing any estates of women. Women were only included in this study as mothers, sisters, and wives as the legal heirs: Demirel, "1700-1730 Tarihlerinde Ankara'da Ailenin

of the Empire, demonstrates an exceptional pattern of women attending the court as applicants and claimants, a subject that I will discuss further in the chapter.

Consequently, I argue that women's extensive practice of registration in court could be identified as an antecedent to a more formalized notion of marriage in the socio-legal sense, which led to its formalization and codification in the following century.

Niceliksel Yapısı," 1096; Similar kinds of neglect of women could be observed in the following works: Demirel et al., "Osmanlılarda Ailenin Demografik Yapısı," 101; Muhiddin Tuş, "Kayseri Tereke Defterleri Üzerine Bir Deneme," *Selçuk Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 4 (Konya, 1998): 157-191; In his work on a collection of fetvas and court records, Savaş has discussed the position of women at different phases of family life and marriage: Saim Savaş, "Fetva ve Şer'iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılımı," *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi II* (Ankara: Başbakanlık Aile Araştırmaları Kurumu Yayınları, 1992), 530.

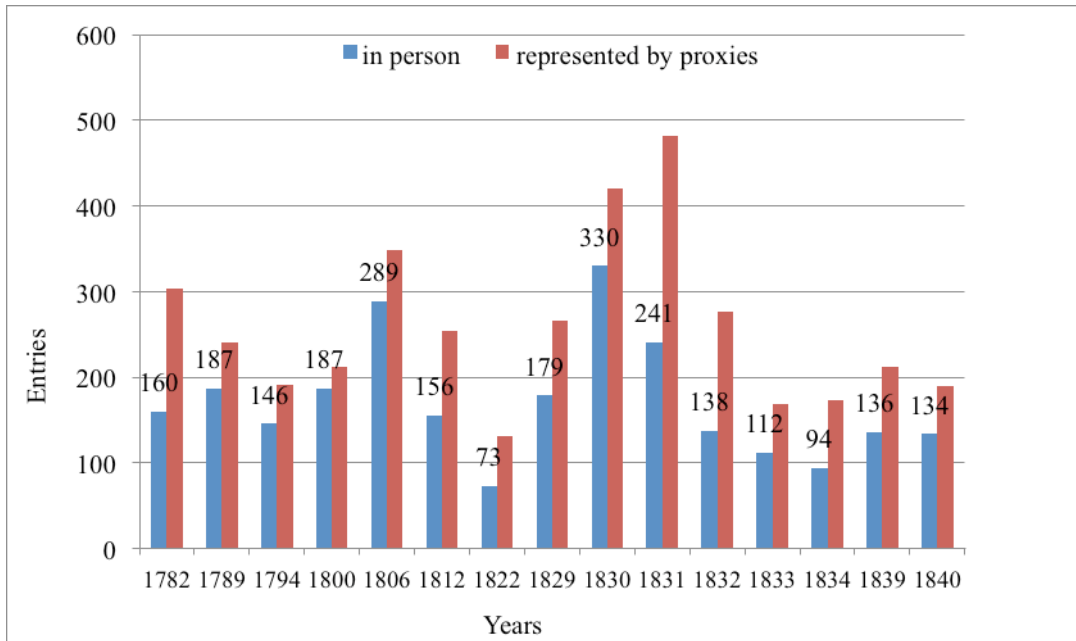


Figure 2.1 Number of Female Claimants in Person vs. Female Claimants Represented by Proxies in the Dāvud Pasha Court

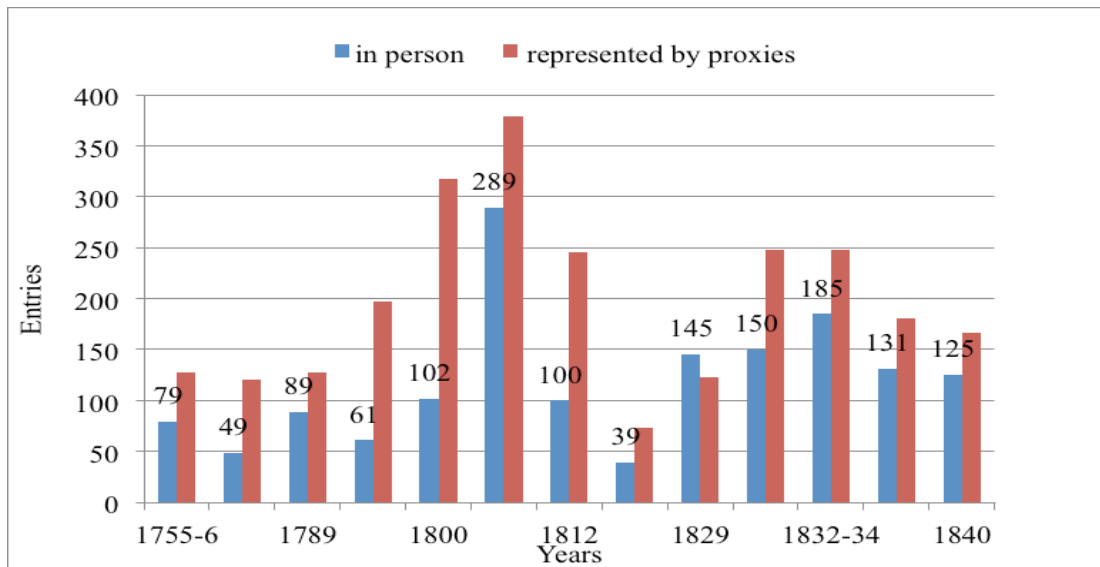


Figure 2.2 Number of Female Claimants in Person vs. Female Claimants Represented by Proxies in the İstanbul Bāb Court

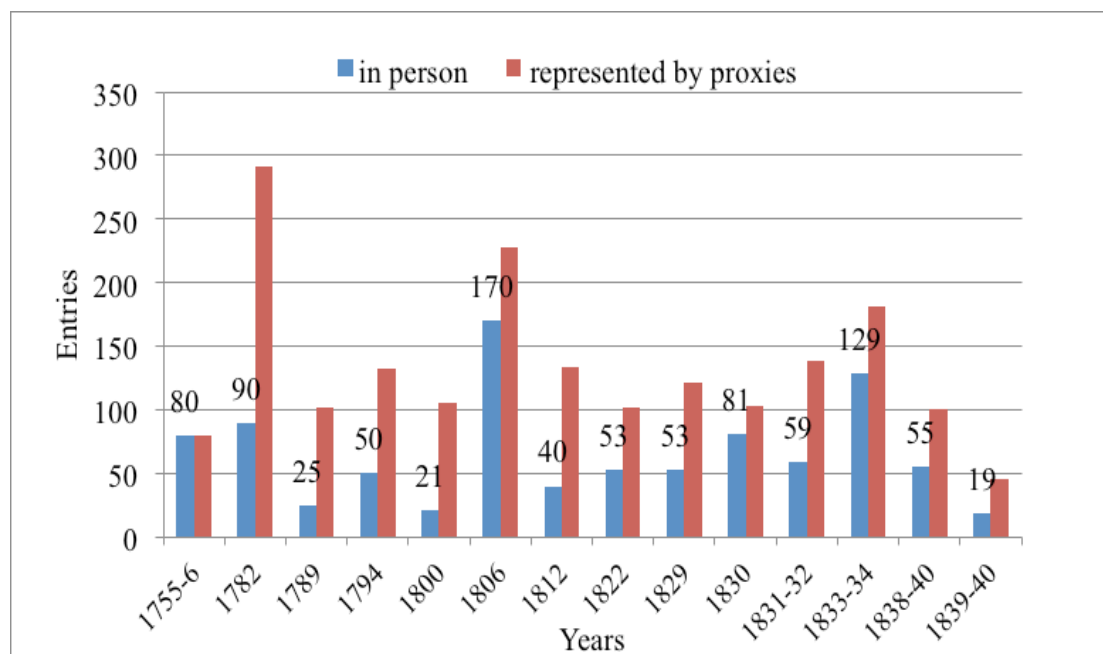


Figure 2.3 Number of Female Claimants in Person vs. Female Claimants Represented by Proxies in the Aḥī Çelebi Court

The Case of Dāvud Pasha Court—Towards a Specialized Court System?

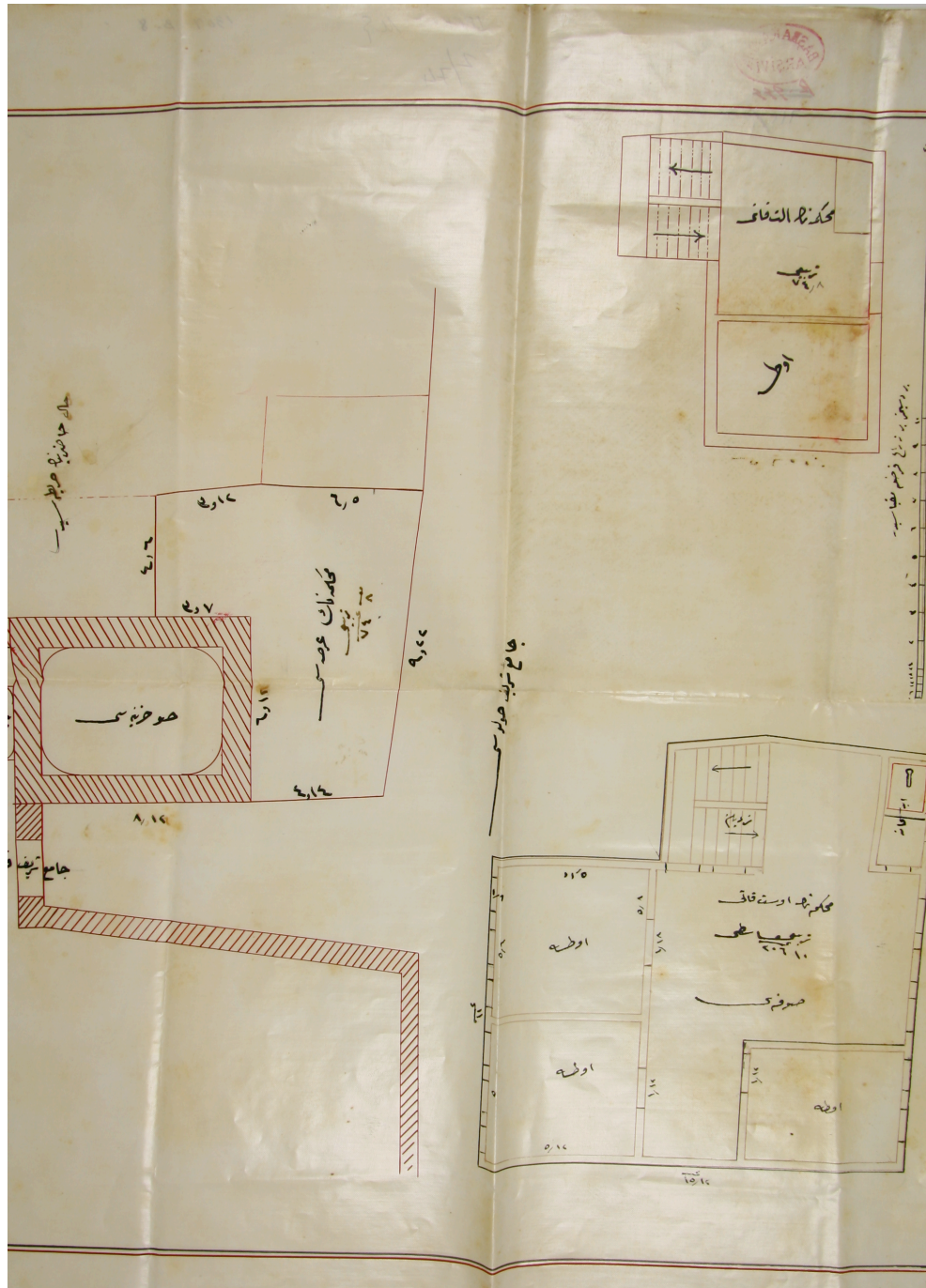


Figure 2.4 Map of the Dāvud Pasha Court Showing the Layout Plan of Both the Ground Floor and Second Floor, BOA, Y.PRK.MŞ 2/74 (H. 8 Receb 1307/ 28 February 1890)

Another important question concerning how the courts were used—and one that has received even less attention—is the matter of courts’ specialization. This dissertation bases its quantitative inferences on the assessment of three different courts’ ledgers, one of which is the Dāvud Pasha court. During my research in these court ledgers, I noticed clear differences between them and theorized it may indicate the existence of a division of labor among the courts. In this section, I will review that information and present the case for a sophisticated eighteenth-century specialization of the court system.

Dāvud Pasha, one of the earliest of Istanbul's thirteen districts (*nāḥiye*) established during the fifteenth century, had taken its name from the mosque built in 1485 by the Koca (Dervīş) Dāvud Pasha (d. 1498), who was the governor-general (*beylerbeyi*) of the Anatolian provinces under Mehmed II (1451-1481) and the Grand Vizier of Sulṭān Bāyezīd II (1482-1497).¹³ The complex, which gave its name to the district located between Avret Pazarı and Altımermer near Samatya¹⁴ in the southwestern part of Istanbul's historic peninsula, comprised a mosque, madrasa, hospice (*imāret*), school, tomb, and a public fountain.¹⁵ According to the *Hadīkatü'l-Cevāmi'*, the court of Dāvud Pasha was originally located in the Dülger-zāde mosque near the Sarrāḥāne quarter. The court was later moved to the Dāvud

¹³ Halil İnalçık, Johannes Heinrich Mordtmann, Stefanos Yerasimos, *Historic Cities of the Islamic World*, ed. C. Edmund Bosworth (Leiden: Brill Publications, 2007), 191; Semavi Eyice, “Davud Paşa Külliyesi,” *DBİA* 3 (İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1993), 7-8.

¹⁴ P. Ğhukas İnciciyan, *XVIII. Asırda İstanbul*, compiled by Hrand D. Andreasyan (İstanbul: İstanbul Fetih Cemiyeti İstanbul Enstitüsü yayınları, 1976), 51; the district is located between Cerrahpaşa and Kocamustafapaşa neighborhoods in the present day, “Davutpaşa” in *DBİA*, 7.

¹⁵ Doğan Kuban has pointed out that the school and imāret are no longer extant, in Doğan Kuban, *Osmanlı Mimarisi* (İstanbul: YEM Yayın, 2007), 210-211. See also Mustafa Cezar, *Osmanlı Başkenti İstanbul* (İstanbul: Erol Kerim Aksoy Kültür, Eğitim, Spor ve Sağlık Vakfı Yayınları, 2002), 385, 411, and 487-493.

Pasha complex due to necessity, and a tomb for Süleymân Pasha, the *kul kethüdâsı*, was erected on its original site. Since *Hadikatü'l-Cevâmi'* dates the tomb's construction to H.1073/1662-63 A.D., there is ample reason to assume that the court moved to its new location around that date and, therefore, its original records dated back to the second half of the seventeenth century.¹⁶ The court in Dāvud Pasha was established above the grand entrance door of the mosque's courtyard.¹⁷ The Dāvud Pasha complex suffered a massive earthquake in 1766, after which it was refurbished by the chief architect Tāhir Agha. However, in 1782 a massive fire destroyed the court's earlier records, and the ledgers that are extant now are from that date forward.

In Figure 2.4, a map dated 1890 shows the layout plan of the Dāvud Pasha court. Adjacent to the court's land property and the entrance to the mosque's courtyard is the water reservoir. The fountain of the Dāvud Pasha complex, situated outside the precinct wall, is known to have been the oldest extant water fountain in the city with an inscription dated 1485.¹⁸ The court consists of two levels: the ground floor has one separate room and a hall

¹⁶ In one of the principal articles regarding the İstanbul sicils, it has been assessed by Seng that the volumes from the courts of İstanbul proper begin only around 1612. Seng has stated that the volumes concerning İstanbul proper surprisingly begin more than a century and a half after the city's conquest by the Ottomans. Seng further mentioned that the İstanbul Bâb court's records date back to 1665, in Yvonne J. Seng, "The Şer'iye Sicilleri of the İstanbul Müftülüğü as a Source for the Study of Everyday Life," *TSAB* 15, no. 1 (1991), 315; Eyice dates the move of the court from its original position next to the Dülger-zâde mosque to Ramadan of H.1071/May 1661 by the order of Sultân Mehmed IV (1648-1687). He suggested that the new building of the court was built right next to the Dāvud Pasha mosque, and it did not belong to the original plan of this complex, *DBİA*, 8.

¹⁷ Ayyansarâyî Hüseyîn Efendi, Alî Sâtî' Efendi, Süleymân Besîm Efendi, *Hadikatü'l-Cevâmi'* (İstanbul Câmileri ve Dînî-Sivil Mi'mârî Yapılar), Ahmed Nezih Galitekin, haz. (İstanbul: İşaret Yayınları, 2001), 158.

¹⁸ Ekrem Hakkı Ayverdi, *Osmanlı Mi'marisinde Fatih Devri, 855-886 (1451-1481) III* (İstanbul: Baha Matbaası), 327-337; İbrahim Hilmi Tanışık, *İstanbul Çeşmeleri I* (İstanbul: Maarif Matbaası, 1943-45), 2; Aptullah Kuran, *The Mosque in Early Ottoman Architecture* (Chicago: University of Chicago Press, 1968), 52-53; Tahsin Öz, *İstanbul Camileri I* (Ankara: Türk Tarih Kurumu Basımevi, 1987), 44-45.

and the second floor has a larger hall and three separate rooms with a small room labeled *ābdesthāne*, which seems to have been used as a water-closet or as a room in which to perform the canonical ablutions. The mosque and the court seem to have been located in a district that is densely populated. According to the cadastral surveys examined by Ayverdi and Barkan, Dāvud Pasha comprised thirteen neighborhoods and eighty-four waqfs in 1546 and 264 waqfs in 1596.¹⁹ This increase in the number of waqfs indicates the increase in the population of this district. Hence, it is possible to deduce that neighborhoods established earlier had relatively denser population.²⁰

As Madeline Zilfi has pointed out, “vitality of local knowledge and local legal practice, its uniqueness to a locality” are the very elements that compose the different patterns that might exist in separate locations and districts of a city.²¹ Zilfi gave the example

¹⁹ See İnalçık, Mordtmann, and Yerasimos, 191; Ömer Lütfi Barkan and Ekrem Hakkı Ayverdi, *İstanbul Vakıfları Tahrir Defteri: 953 (1546) târihi* (İstanbul: Baha Matbaası, 1970), 345-347; on the social structure of mahalle, see Ömer Demirel, “Kuruluşundan Günümüze Çeşitli Yönleriyle bir Osmanlı Mahallesi,” XIII. *Türk Tarih Kongresi, Ankara, 4-8 Ekim 1999*, v.3 pt.3 (1999).

²⁰ Başaran and Bingöl’s survey of a long-neglected source, the unofficial census of 1829, which also included non-Muslims, women, and children in *intra muros* Istanbul reveals the number of individuals residing in each neighborhood: Betül Başaran, “The 1829 Census and Istanbul’s Population During the Late 18th and Early 19th Centuries,” *Studies on Istanbul and Beyond, The Freely Papers I*, ed. Robert G. Ousterhout (Philadelphia: University of Pennsylvania, Museum of Archaeology and Anthropology, 2007): 53-73, and Sedat Kaynak Bingöl, “İstanbul’da 1829 Nüfus Sayımı ve Bazı Mahallelerin Müslüman Nüfusu Üzerine Bir İnceleme,” *AÜDTÇFD* 23 no: 36 (2004): 43-60. See also Başaran’s unpublished dissertation that further discusses the dynamics of neighborhoods with regard to the residents’ networks and associations with the court: Betül Başaran, “Remaking the Gate of Felicity”. Başaran has pointed out that in the sixteenth and early eighteenth centuries, there were occasional attempts at making surveys to register the residents of chosen neighborhoods in Istanbul. Thus, every resident was designated to present someone as guarantor, and in case they were unable to do so, they could be banished from the neighborhood; for a further treatment of this subject, see Tahsin Özcan, “Osmanlı Mahallesi: Sosyal Kontrol ve Kefalet Sistemi,” *Marife* 1 (2001): 129-51; Mehmet Akman, “Osmanlı Hukukunda Faili Bilinmeyen İtlaf Durumlarında Öngörülen Ortak Sorumluluğun Hukuki Niteliği,” *THTA* 3 (2007): 789-94.

²¹ Zilfi, “We Don’t Get Along,” 275.

of the clustering of *hul'* cases in a certain neighborhood during a certain period in an urban setting. While this example would indicate the apparent differences in divorce patterns in a given district, it also would point to the specialized role of a specific court if this clustering was continuous throughout the period of half a century. In my examination of the court records of Dāvud Pasha between the years 1782 and 1840 and the Aḥī Çelebi and İstanbul Bāb courts between the years 1755 and 1840, it was apparent that the former of the three had acquired a specific role by its function of handling marriage- and divorce-related suits. Interestingly, the records of Dāvud Pasha contained a large number of divorce cases, both registrations of formerly settled *talāk* and *hul'*, along with nafaqa and other cases regarding matrimonial property allotment. In her study of the structure and function of the sharī'a courts in the early 1990s, Yvonne Seng reaffirmed Mehmet Zeki Pakalın's statement that the İstanbul Bāb court, run by the nāib of the kadi of İstanbul, heard matrimonial and notarial suits in the area.²² Contrary to Seng, Zilfi stated that this court's specialization in family and marital suits began only in the mid-nineteenth century. According to her, prior to this period in the eighteenth century and earlier, the İstanbul Bāb court heard a range of everyday disputes concerning inheritance, custody, commercial and guild matters, together with divorce and marital matters.²³

²² Seng, 315; Pakalın explicitly states that this court especially attended to matters concerning the husband and wife, and the registry of notarial business: Mehmet Zeki Pakalın, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü* I (İstanbul: Milli Eğitim Basımevi, 1971), 142. For a general overview of the functions of the courts in the capital, Ahmet Akgündüz, *Şer'îye Sicilleri*; Abdülaziz Bayındır, *İslâm Muhakeme Hukuku*.

²³ Zilfi, 275, ft. 31.

In my assessment of the sicils of the İstanbul Bāb court, the number of marriage related and domestic suits was large compared to similar suits registered during this period in the Aḥī Çelebi court (see Figure 2.5). However, in comparison to the number of divorce and alimony suits registered in Dāvud Pasha before 1840, it was clear that the İstanbul Bāb court had no precedence. In fact, the figures regarding the registration of *ṭalāk* and *ḥul'* suggest that the Dāvud Pasha court was the foremost forum for handling domestic suits during the period under scrutiny and was in all probability designated as such:

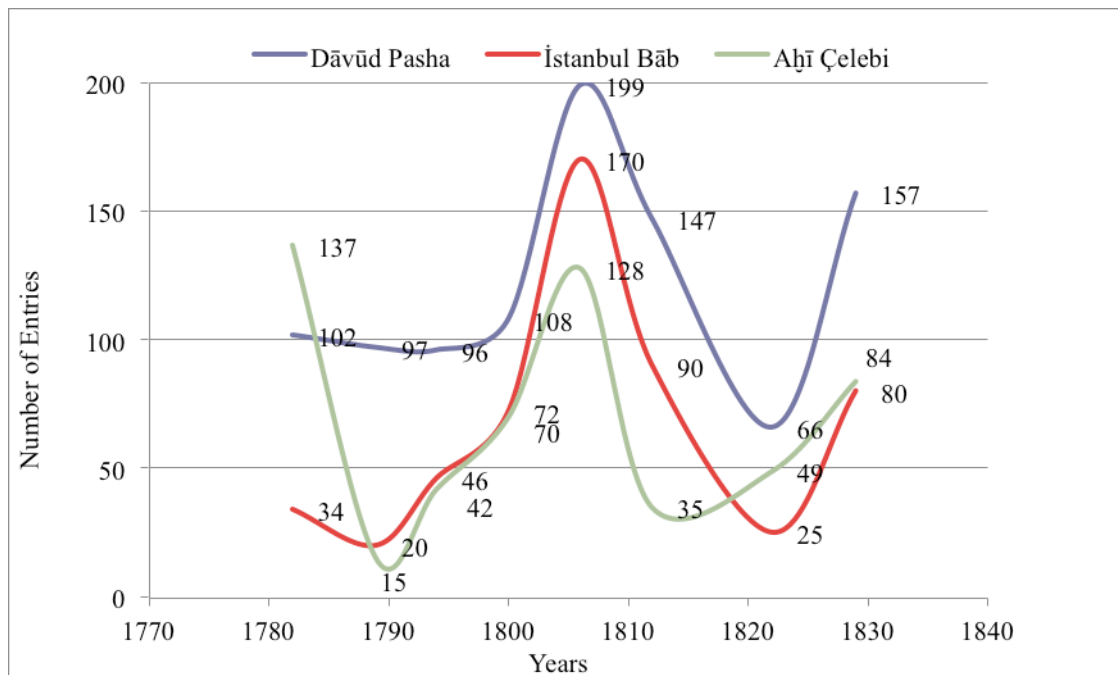


Figure 2.5 Total Number of Divorce Cases Registered in the Dāvud Pasha, İstanbul Bāb and Aḥī Çelebi Courts

While the other courts attended to cases related to real estate, trade rights, endowments and notarial business, the Dāvud Pasha court seemed to specialize in matrimonial matters. Other studies have suggested a more individualized role for specific courts in the capital during the eighteenth and nineteenth centuries. For instance, İnalçık has shown that the Eyüp court heard suits concerning the city's water distribution due to the court's proximity to water distribution channels.²⁴ The cluster of commerce-related suits in the records of the Maḥmūd Pasha court was possibly due to its location on the crossroads connecting the grand bazaar, the Bedestān, to Tahtaḳal'e and the landing piers of Bağçe kapısı.²⁵

The high rate of divorce and matrimony related suits registered in the Dāvud Pasha court over the course of sixty years eliminates the possibility of litigants' preference for this court due to the leniency of the regent (nāib) and other court officials. The frequent rotation of court officials was strictly imposed during this period to avoid their exploitation of their positions.²⁶ In my assessment of the divorce cases registered in the Dāvud Pasha court, the

²⁴ Halil İnalçık, "Maḥkama", *EI2* (Brill Online, 2013); see also the article by Emecen who mentioned a few cases concerning the water supply system and the court's involvement, but did not address the issue of this court's specific function: Feridun M. Emecen, "Osmanlılar'da Devlet, Toplum ve Mahkeme," *18. Yüzyıl Kadı Sicilleri Işığında Eyüp'te Sosyal Yaşam*, ed. Tülay Artan (İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998), 77-78.

²⁵ İnalçık, Mordtmann, and Yerasimos, 192.

²⁶ Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı*, 87-90; İnalçık states that during the establishment phases of the sharī'a courts, a kadi's term in office was unlimited. At the end of the sixteenth century, the term was limited to three years, and afterwards to two years. Due to the increased corruption of the kadis and their deputies, the term of office was reduced to one year at the end of the seventeenth century: İnalçık, "Maḥkama". According to D'Ohsson, in the second half of the eighteenth century, the appointment period of a kadi was reduced from two years to one: Ignatius Mouradgēa d'Ohsson, *Tableau général de l'empire othoman, divisé en deux parties, dont l'une comprend la législation mahométane, l'autre l'histoire de l'empire othoman*, IV (Paris, 1787-1820 de l'imprimerie de Monsieur), 569; according to the kânunnāme of 'Abdurrahman Pasha, the district kādīs' term of service was twenty months and the great mollahs' was one

nāibs strictly adhered to the requirements of the hanafi school. The rulings by the regents in this court did not indicate any dissimilarity with those of the other two courts. Hence, it seems fair to assume that people knew this was the designated court for registering family and matrimony related issues.

Uzunçarşılı stated that in H.1090/1680 A.D. a *firmān* (imperial edict) was issued commanding the termination of the functions of the Balāt court due to the regent's adverse actions concerning marriage contracts and drafting other documents. The *firmān* commanded the kadi of Istanbul to reinstate moral, devout, and trustworthy regents in courts.²⁷ The incident was also recorded in the *Zübde-i Vekayiât*, which mentioned that the kadi of Istanbul was deterred from assigning nāibs to this court.²⁸ Perhaps the flexibility of the nāibs concerning marriage contracts was the reason one might prefer a court for settling marriage-related cases. It was quite possible that people whose union was not permitted by their faith used the Balāt court in order to be married. Given that the records of the Dāvud Pasha do not exist prior to 1782, it is impossible to assess whether this court had a similar accumulation of matrimonial suits. However, a comprehensive study of the Balat ledgers in the era prior to 1782 might reveal important information on this court's role in marriage and family related issues. Until such a project has been undertaken, we are unable to postulate on whether

year, at the beginning of the eighteenth century: Kanunlar, *MTM*, 1/2 (İstanbul, 1331), 541; see also Uriel Heyd, *Studies in Ottoman Criminal Law*, ed. V.L. Ménage (Oxford: Clarendon Press, 1973), 214. For a detailed account of the sources treating the post of kadi, Feda Şamil Arık, "Osmanlılarda Kadılık Müessesesi," *OTAM* 8 (1997): 1-73.

²⁷ Uzunçarşılı, *Osmanlı Devletinin İlmiyye Teşkilatı*, 142, ft.2

²⁸ Defterdar Sarı Mehmed Paşa, *Zübde-yi Vekayiât (1066-1116/1656-1704)*, Abdülkadir Özcan haz. (Ankara: Türk Tarih Kurumu Basımevi, 1995), 112.

Balat, like the Dāvud Pasha court, specialized in these lawsuits in an earlier decade or whether this court was preferred by its attendees due to a series of regents who delivered favorable verdicts.

A specific court order registered in the Dāvud Pasha court in 1806 might be another indication of this court's specialized function²⁹:

“When my exalted decree reaches the *ḳāḏīs* of Istanbul and Üsküdar and Galata and Eyüp (*Hāşşlar*), let it be known that the Patriarch of Istanbul and the metropolitan bishops have submitted a petition to my Imperial Council regarding the handling of such cases as the contract of marriage, repudiation of wives, and run-away wives of the Greek community by no other persons than the proxies appointed by the Patriarch. The conduct of such cases should be handled according to the plaintiff's own religious conviction. Those marriage contracts that are not permissible by their specific faith should be forbidden. These precincts have been commanded by my royal decree to the abovementioned Patriarch... Muḥarrem 1221 (21 March 1806)”

²⁹ The rest of the decree is quoted here: “Meanwhile, some negligent and covetous individuals, be it men or women, with no respect to their religion's regulations, have gone to neighborhood imams and kadi courts, with the incentive to take on another wife, while they were already married. These persons, being purely against their law, have managed to convince the authorities solely by their word, and attain marriage and divorce. These acts, acknowledged by many, have caused their children to be miserable, desolate, confused, falling to poverty. Some of them came from the Rumelian and Anatolian provinces to Istanbul, in order to avoid the taxes (*tekālif-i rüsūmat*) that befell on them, and marry other wives. These persons have already been accused of not having paid their taxes, and disobeying the law in their provinces. This condition, mounting gradually, has to be disposed of, having caused much disturbance. It has been impossible to secure order and discipline. From now on no one other than the Patriarch and the proxies appointed by him shall oversee any cases pertaining to the Greek populace's marriages and divorces. When these individuals applied to neighborhood imams and kadi courts to carry out such deeds, they should be disregarded and turned down. My order concerning this matter is preserved in my imperial treasury. The clergymen should not contract those marriages that are not permissible by their law. Non-Muslims should not be marrying other women while they have already been married to one. They are allowed to marry up to three times only after the death of their wives. The ones not abiding by these rules should not be given license; they should be chastised and reprimanded. All these matters were addressed in my imperial decree,” *DPM* 47 (H.1221/ 1806 A.D.), 1/1.

This passage, extracted from the imperial decree, illustrates a variety of significant issues regarding the Greek Orthodox population's use of the sharī'a court concerning matters of personal status. Although the issues raised point to non-Muslim subjects' benefiting from loopholes in the system, and could be of greater interest to those who study the history of non-Muslims in the Ottoman sharī'a courts, I use this example solely to demonstrate the specific role of the Dāvud Pasha court in matrimonial relations. As it appears, the decree states that Greek Orthodox Christians used the sharī'a court to circumvent the prohibitions of their own religious law on issues such as marrying second wives. There were continuous attempts by the state to close this loophole in cooperation with the Patriarchate, and, therefore, it might have made sense for them to ensure there were courts that specialized in personal status issues.³⁰

In an incident recounted by Şânî-zâde in 1820, the son of Dīvānhâne Tercemānı Hançerli-oğlu, who had been executed due to treachery, had previously married his relative.³¹ According to the rules of his Christian faith, it was not permissible for this man to marry the woman. Thus, he had married her with an Islamic marriage contract.

³⁰ The fact that a petition concerning the same issue of limiting the Greek Orthodox community's usage of the sharī'a courts and neighborhood imams regarding marriage- and divorce-related matters was issued by the Istanbul Greek Patriarchate in 1815 indicates the continuing of such behavior regardless of the commands: *BOA, C.ADL. 68/4077 (21/C/1230- 1 May 1815)*. Gradeva has stated that recurring orders from the Ottoman central authorities forbidding kadıs, nâibs and imams to intervene in family matters of Christians living within their jurisdictions can be seen in the example of a firman addressed to the kadıs of Kozluca, Yeni Pazari, Varna, Hacıoğlu Pazarcık and Mangalia, declaring that all matters of marriage and divorce should be taken to the bishop of Varna, and not to the imams of the mahalles, and warning kadıs not to annul the religious penalties imposed by the church courts in 30 Receb 1217/ 26 November 1802, in Gradeva, "Orthodox Christians in the Kadi Courts," 59-62.

³¹ Şânî-zâde Mehmed 'Atâ'ullah Efendi, *Şânî-zâde Târîhi* II [Osmanlı Tarihi (1223-1237/1808-1821)], Ziya Yılmaz, hazırlayan (İstanbul: Çamlıca Basım Yayın, 2008), 1061.

The Greek Orthodox Patriarch had excommunicated the son of Hançerli-oğlu, who then had emigrated to Yanya. Hence, the exploitation of the kadi courts and the sharī‘a regulations regarding personal status was a common phenomenon among the non-Muslim inhabitants of the city, and the state worked together with the Patriarchate to counteract such deeds. The extant cases registered by non-Muslims in the Dāvud Pasha court following the 1806 decree demonstrate that the court’s popularity did not depend on the kind of ruling the petitioners received.

It has been established that plaintiffs were not restricted in their choice of court. Consequently, any person could choose to attend any court of their preference. This decision was generally based on the proximity of the court to one’s house, given the time and traveling fees required. The records of the Dāvud Pasha court suggest that even claimants from neighborhoods closer to other district courts attended Dāvud Pasha to register their divorces. It is interesting to note that in Figure 2.5, in the Aḥī Çelebi court in 1755-56, there were only forty-seven divorce registrations; and in 1782, the number increased more than twofold to 137, dropping down to fifteen in 1789. Given that the Dāvud Pasha court was completely destroyed in the great fire of 1782, along with, presumably, 20,000 houses³², it is understandable that claimants chose to register their

³² For a detailed account of the fires in the capital in the year 1782, see Derviş Efendi Mustafa, *1782 Yılı Yangınları “Harîk Risālesi”*, Hüsamettin Aksu, hazırlayan (İstanbul: İletişim, 1994); see also İnalçık, Mordtmann, and Yerasimos, 201. In my examination of the records of the three courts, I particularly take into consideration the corresponding occurrences of major fires and epidemics, since these incidents might provide important demographic distinctions between the affected and unaffected regions of the city. For instance, in 1746, 1750, 1752, 1755, 1756, 1782, 1795, 1804, 1808, 1826, the above-mentioned districts of Istanbul suffered from substantial fires that destroyed over a thousand households. Major outbreaks of the plague and cholera in Istanbul correspond to the years 1726, 1751, 1760, 1765, 1778-1781, 1784-1787, 1812, and 1834. For the impact of the plague during the eighteenth and early-nineteenth century in

suits in the proximate Ahî Çelebi court instead. This might also explain the reason for the radical drop in the number of divorce cases registered in 1789 in Ahî Çelebi.

Although the specialization of courts in specific subject matters is not the primary concern of this thesis, the Dāvud Pasha court's seeming specialization in marital issues such as divorce and alimony related claims is a truly significant phenomenon that has bearing on the social values and customs, matrimonial patterns, economic affairs and gender constructions embodied within specific localities of Istanbul during this period. Perhaps this precise development was the society's—and especially women's—response to the successive wars and to the social and legal necessities generated by their impact. Whereas the particular reasons, such as the continuous wars, the widespread fires, and severe earthquakes, seem to have triggered the increase in the registry of divorces, the determination and necessity felt by women to register and formalize these divorce settlements indicate their desire for a formalization of matrimonial affairs. This necessity is distinctly illustrated in the ledgers of the Dāvud Pasha court much earlier than the establishment of the first Ottoman law of family rights in 1917. Yet the fluctuations shown in the charts above indicate that, as in other ventures of the Ottoman state prior to the Tanzimat period, this change was not given the status of law and remained a

Ottoman territories, see Daniel Panzac, *La Peste dans l'Empire Ottoman, 1700-1850* (Leuven, Paris: Peeters, 1985); Osman Nuri Ergin in his multi-volume work on the structure of the municipal structure of Istanbul lists the significant fires that took place in the city as mentioned in the chronicles and mühimme defters, Osman Nuri Ergin, *Meccelle-i Umur-i Belediyye*, No. 21, Vol.2 and Vol.3 (İstanbul Büyükşehir Belediyesi Kültür İşleri Dairesi Başkanlığı, 1995); an invaluable article that focuses on the major fires of the eighteenth and nineteenth-century Istanbul that destroyed many important buildings and monuments is an additional reference for the fire incidents in the city, see Mustafa Cezar, "Osmanlı Devrinde İstanbul Yapılarında Tahribat Yapan Yangınlar ve Tabii Afetler," *Türk San'atı Tarihi Araştırma ve İncelemeleri* (İstanbul: Berksoy Matbaası, 1963), 327-414.

recommended practice. It may have been encouraged by the authorities, but the right of citizens to select their legal venue was allowed and respected.

Contextualizing the Quantitative Data

The occurrence of divorce demonstrates the permeability of the law between the public and private spheres. Although court petitions by married couples reflect the failure of their private resolutions, they emphasize the vital role of judges in supporting women's interests, as indicated by Şem'dānī-zāde in a rather infelicitous fashion. The quantitative data gathered from the records of three different courts located in *intra muros* Istanbul—Dāvud Pasha (starting in 1782), İstanbul Bāb, and Aḥī Çelebi—allows for certain general assessments for the eighty-five years between 1755-1840. The evidence shows that registering repudiation in court was one way for women to secure financial compensation. Accordingly, I observed that women were the predominant gender group that registered both talak and ḥul divorces, as expected, given the legal mechanisms that are asymmetrical genderwise (Figures 2.6 to 2.8):

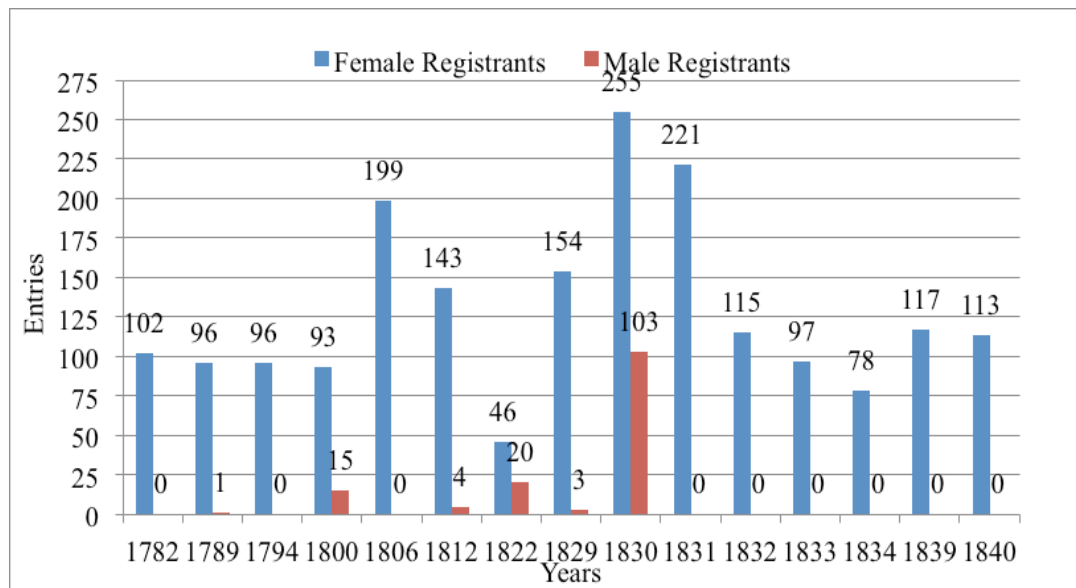


Figure 2.6 Number of Registrants of All Divorce Cases According to Gender in the Dāvud Pasha Court

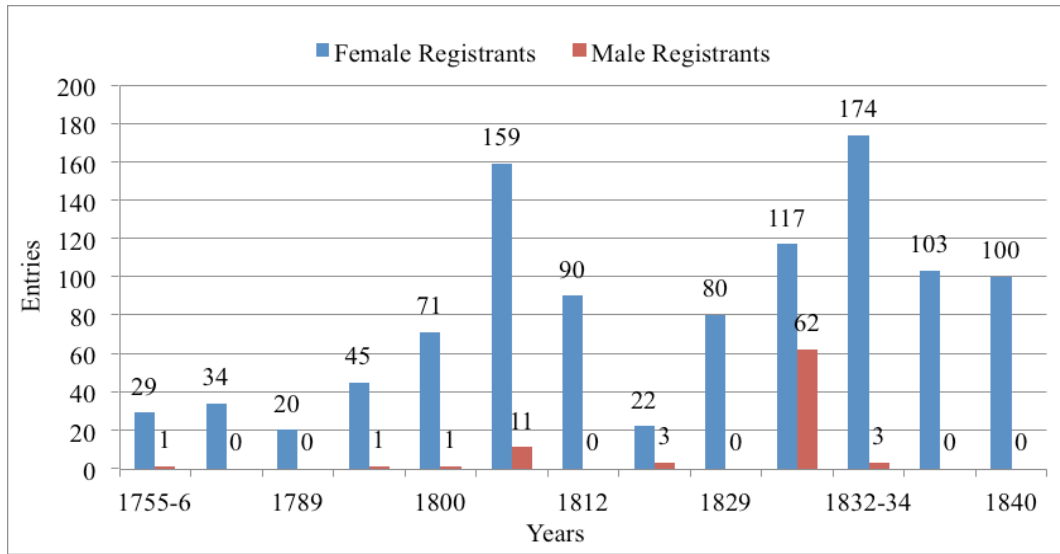


Figure 2.7 Number of Registrants of All Divorce Cases According to Gender in the İstanbul Bâb Court

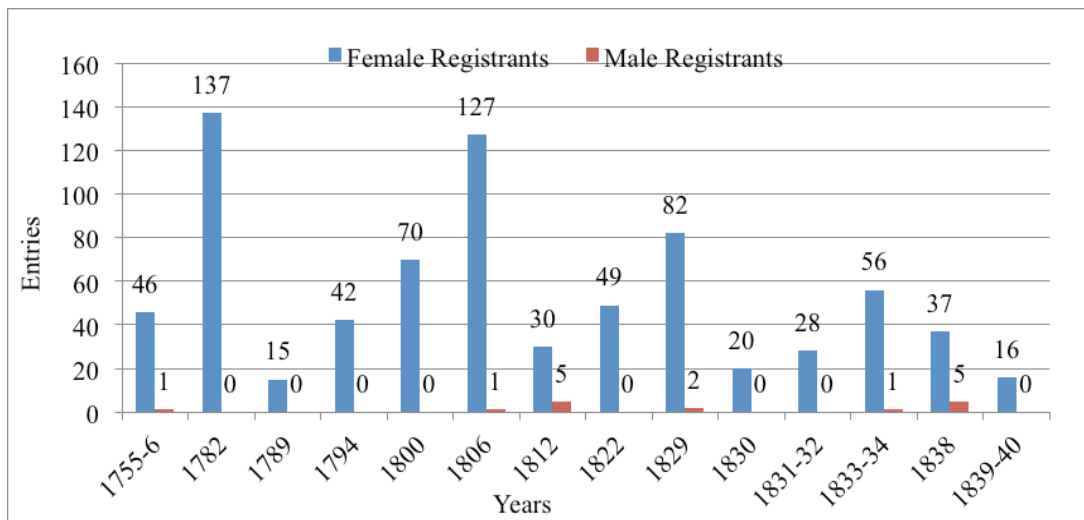


Figure 2.8 Number of Registrants of All Divorce Cases According to Gender in the Ahî Çelebi Court

In two courts—Dāvud Pasha and İstanbul Bāb—the percentage of women claimants’ divorce petitions gradually increased and decreased during the same years. Hence, the intervals between the sampled years in these two courts’ records are comparable (for more detail, compare Figures 2.13 and 2.14 to 2.17 and 2.18). The data in the records of the Aḥī Çelebi court, however, did not correspond to the long-term patterns displayed by the other two courts (see Figures 2.19 and 2.20). The fluctuations in the increases and decreases of divorce registrations in this court also did not conform to the two-interval model developed for corresponding peaks and declines in the Dāvud Pasha and İstanbul Bāb courts. Most importantly, the relative consistency in the periods of increase and decrease in the first two courts was conversely proportional to that of the Aḥī Çelebi court, except for the period between 1800 and 1806. As can be seen in the chart, the numbers in the Aḥī Çelebi court have actually gone against the current except for the sudden rise between 1800 and 1806 (Figure 2.9 and 2.10):

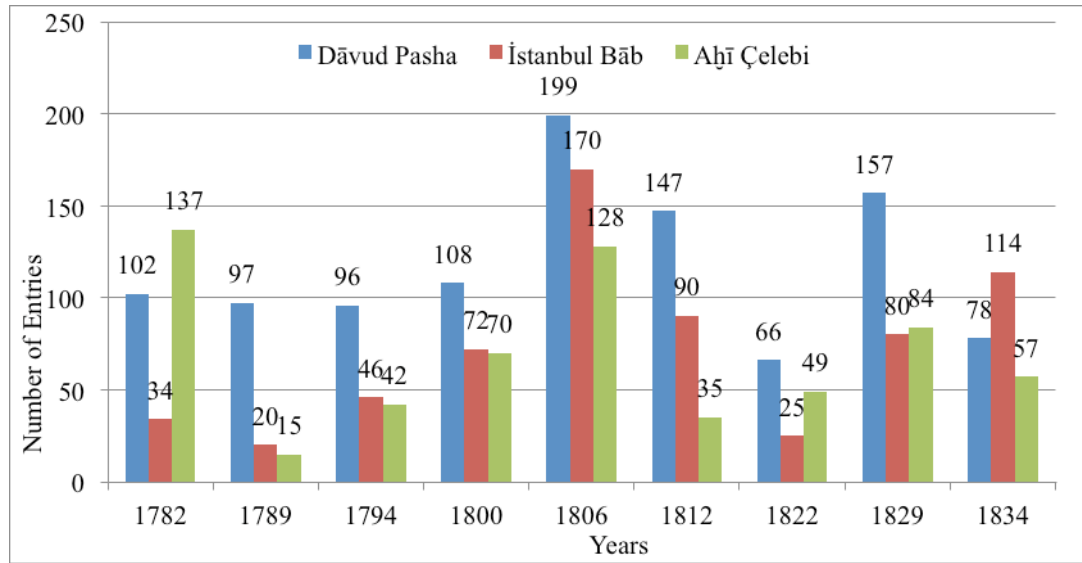


Figure 2.9 Total Number of Divorce Cases Registered in the Dāvud Pasha, İstanbul Bâb and Aḥî Çelebi Courts

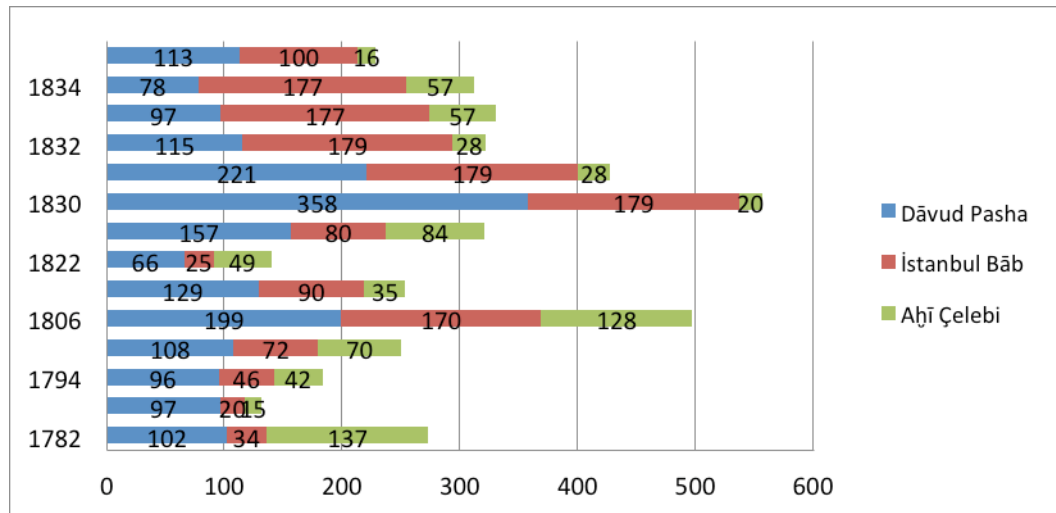


Figure 2.10 Total Number of Divorce Cases Registered in the Dāvud Pasha, İstanbul Bâb and Aḥî Çelebi Courts

According to my sample, the lowest percentages of total divorce cases registered by women occurred in 1789-90 and 1821-22, and the highest percentages occurred in 1805-06 and 1829-30 (see Figures 2.11 through 2.20). The data showed a normal distribution with two intervals where the gradual increase and decrease of the percentages could be traced and contextually explained. As can be seen in the charts below, interpreting the corresponding peaks and drops is a challenge. How to explain these within the context of the major incidents of the period is even more difficult. The increase in 1805-06 might have been the result of mobilization that was in effect due to the war with Russia. Another factor that could have affected the increase in that year could be the great Istanbul fire in the Tophane district in 1804-05. While the combination of all these factors might have caused the peak in divorce registration, the same kind of explanatory factors do not seem to apply in 1829-30. It might be suggested that the rise in divorce registration in 1829-30 could be due to the destructive wars with Russia in 1828-29. Another viable reason could be the ongoing Greek insurgence that would result in the establishment of an independent Greek monarchy in 1832. Finally, the declining silver content of the gürüş hitting its lowest point in 1831-32 could have been among the factors to have played a role in this rise. Conversely, the years that the divorce registration was the lowest seem to also be the years that had a better inflation rate given the higher amount of the silver content of the gürüş. In 1789-90 and 1821-22, there were not any major wars. However, this fact does not explain the exact and corresponding fall in the number of registered divorces in these years. Hence, given the analytical difficulties of correlating mobilization to the warfront and a higher percentage

of divorce registry, it is impossible to be conclusive. Yet it remains desirable to pursue focused studies. In order to produce more conclusive results, more information has to be gathered regarding who was mobilized from the city's population and what the periods were of mobilization and training in Istanbul. Further studies could concentrate on analyzing neighborhoods and districts that were widely affected by epidemics and fires and attempt to draw parallels between the claimants' neighborhoods and the areas that were overcome by these natural disasters.

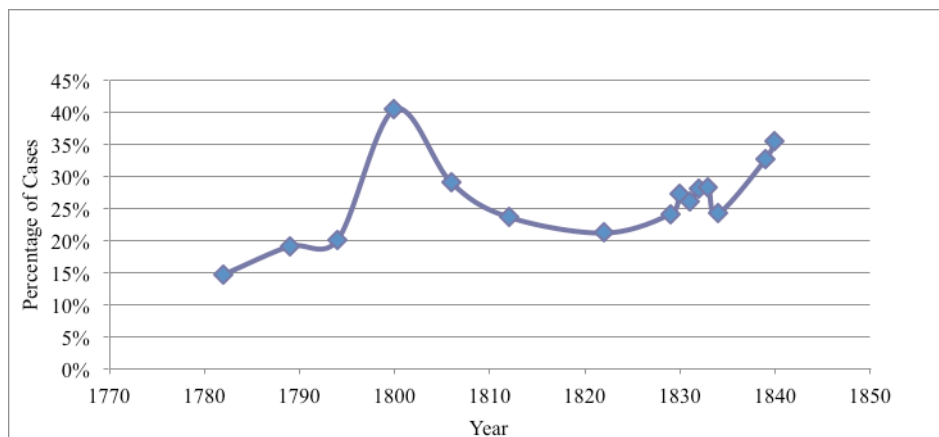


Figure 2.11 Yearly Percentage of Women as Claimants of Divorce and *Nafaka* in the Dāvud Pasha Court

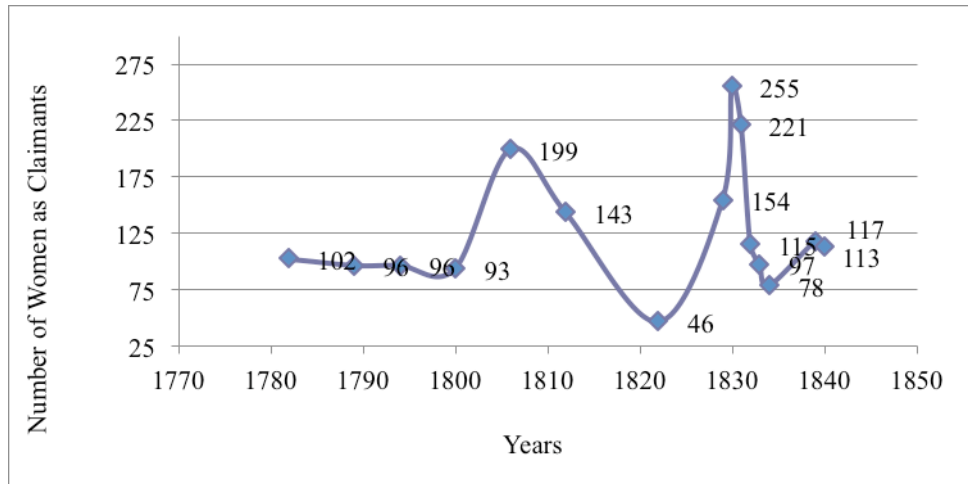


Figure 2.12 Yearly Number of Women as Claimants of Divorce and *Nafaka* in the Dāvud Pasha Court

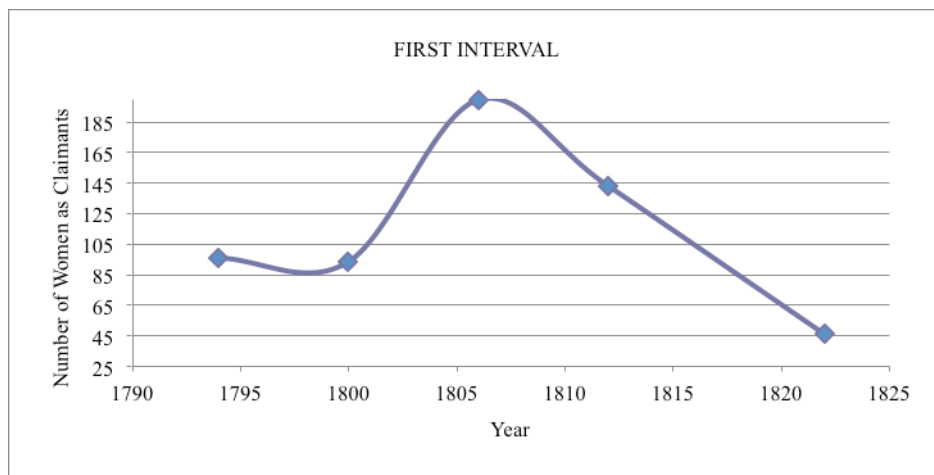


Figure 2.13 Divorce Registration in the Dāvud Pasha Court, 1794-1822

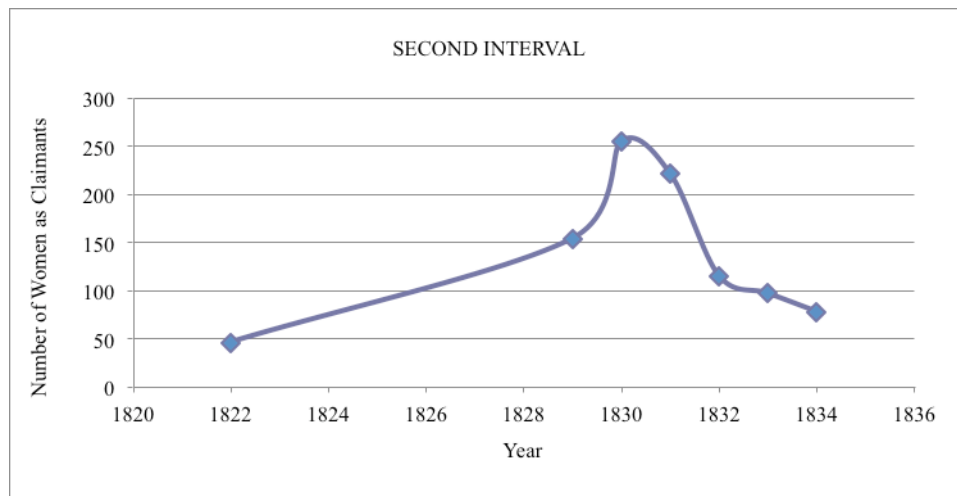


Figure 2.14 Divorce Registration in the Dāvud Pasha Court, 1822-1835

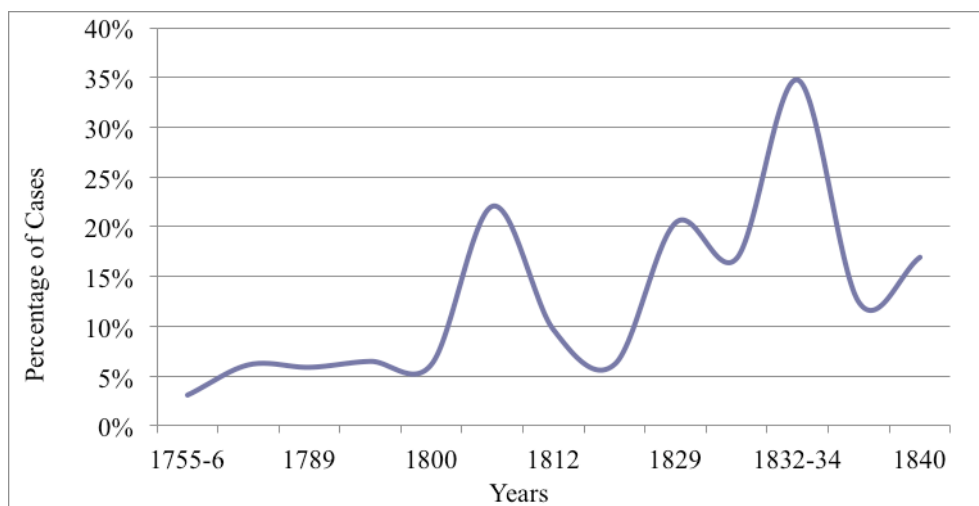


Figure 2.15 Yearly Percentage of Women as Claimants of Divorce and *Nafaka* in the İstanbul Bāb Court

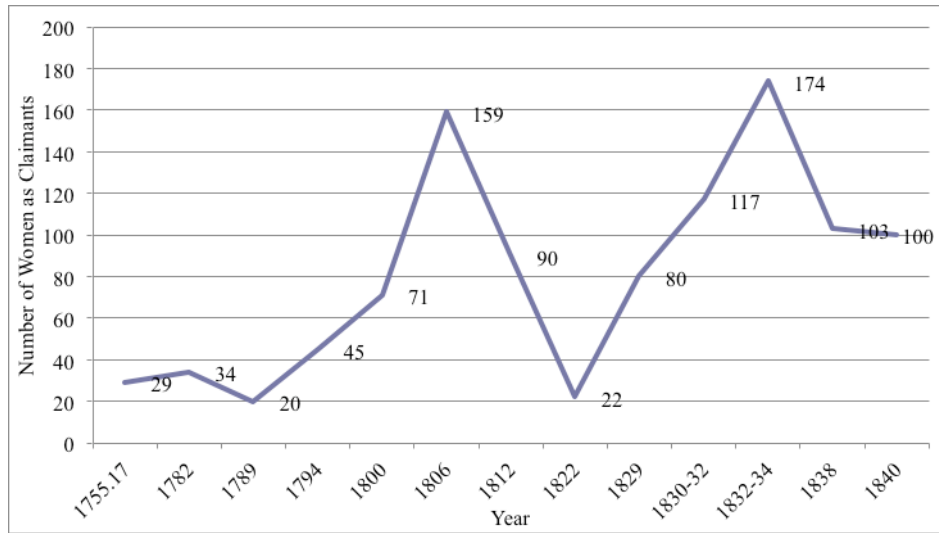


Figure 2.16 Yearly Number of Women as Claimants of Divorce and *Nafaka* in the İstanbul Bāb Court

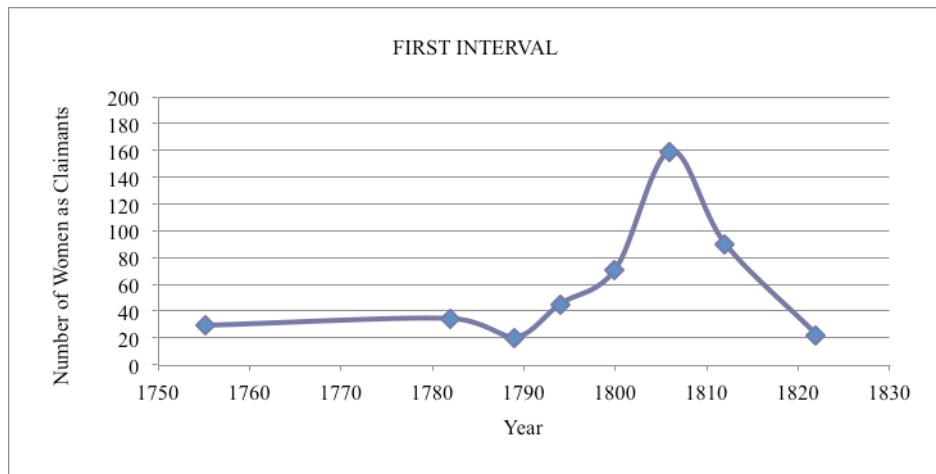


Figure 2.17 Divorce Registration in the İstanbul Bāb Court, 1755-1822

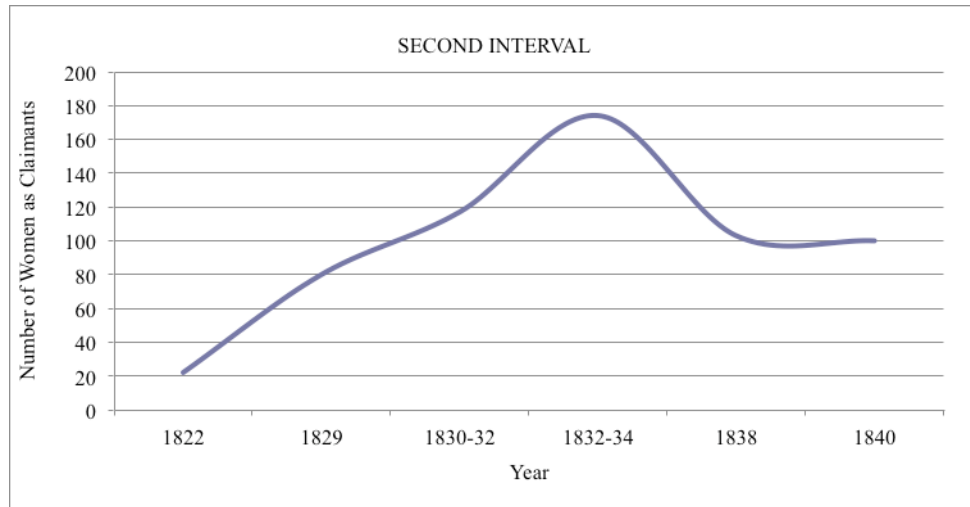


Figure 2.18 Divorce Registration in the İstanbul Bâb Court, 1822-1840

Figures 2.16, 2.17 and 2.18 illustrate two intervals between 1782 and 1840 when the percentage of divorce registrations brought by women gradually increased in the İstanbul Bâb Court. The first interval occurred between 1794 and 1823 (see Figure 2.17), peaking radically in 1806. Even if it is difficult to interpret the causality of this radical increase, there were a few factors that might have played a role in the rise of divorce registration in this period. In 1794-95 a massive fire that burned most of Balıkpazarı, Hâşır İskele, and the Ahî Çelebi mosque could have had a triggering effect on the rise of divorce registration. Until 1820s, a few elements might have had an impact and these include: the migration of Bulgarian immigrants between 1796-97 and 1799-1800; the Serbian revolt in the Balkans in 1804; and war with Russia that began in 1806 and ended in 1812. The revolts against Sultan Selīm III's new order in 1807 also might have had an effect on family life and marriage. Given the fact that there are not any demographic

sources from this period, it is almost impossible to draw definitive conclusions regarding the causes of radical increases and decreases in the registered divorce cases in court. Following a major drop in 1821-22, a similar gradual increase occurred between 1828 and 1832 in the records of the İstanbul Bāb Court (see Figure 2.18). The same explanations suggested for the increase in this period in the Dāvud Pasha court could be proposed for this interval. After demonstrating a slight increase in 1832, the percentage gradually decreased in 1840, the final year of this study's inquiry.

The chart regarding the divorce registration percentages in the Ahī Çelebi Court did not present any similarities with the other two courts. There were not any specific intervals, since the numbers seem to continuously fluctuate (see Figures 2.19 and 2.20):

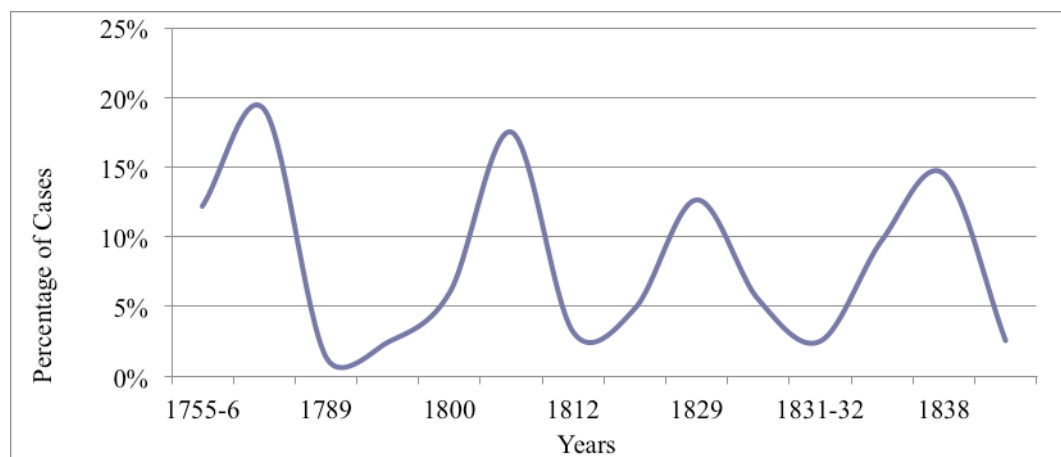


Figure 2.19 Yearly Percentage of Women as Claimants of Divorce and *Nafaka* in the Ahī Çelebi Court

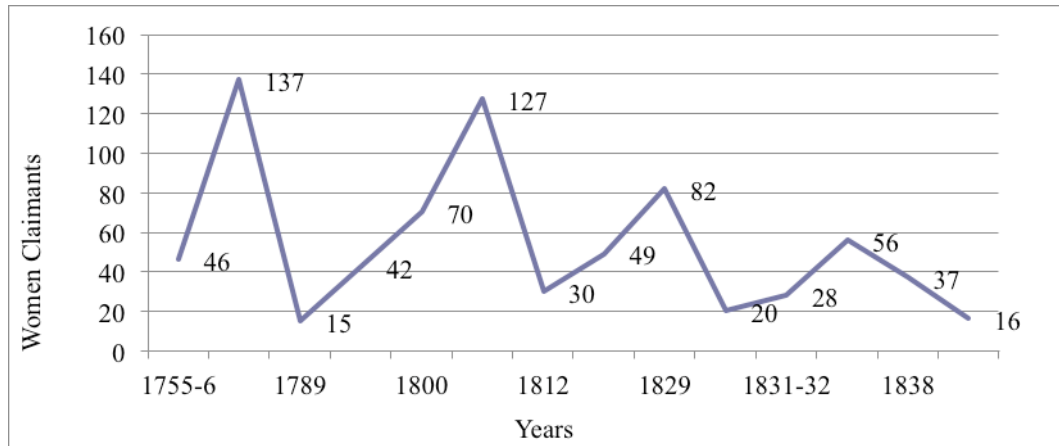


Figure 2.20 Yearly Number of Women as Claimants of Divorce and *Nafaka* in the Ahî Çelebi Court

The fact that the intervals of peaks and decreases corresponded in all three courts' records, allows us to reach certain comprehensive conclusions regarding divorce patterns in Istanbul. The Ottomans adhered to the hanafî school's normative principles of the sharî'a, permitted divorce and recognized it as men's unilateral right. Consistent with previous decades, I observed that consensual separation was not in practice during those eighty-five years. Nevertheless, this type of separation will be treated in this chapter merely because it seems that spouses' plea for consensual separation was generally registered either as *talâk* or as *hul'* due to denominational restrictions. Thus, the three major categories that will be discussed regarding the dissolution of marriage are *talâk*,

hul', and *tefrīk*. The other sub-categories of divorce, namely, *i'lā*, *zihār* and *li'ān* will not be considered in the chapter since they were not represented in the records.³³

The first, *ṭalāk*, was a purely verbal act, effected by pronouncing the phrase “boş ol”³⁴ conveying divorce, and it required no formality, not even the presence of witnesses. As compensation, the husband was obligated to pay his wife’s delayed portion of the dower (*mehr-i mü'eccele*) and alimony (*nafaka*), as well as her three-month waiting period (*‘idda*) maintenance. Once a husband repudiated his wife by *ṭalāk*, the law prohibited her remarriage for the duration of three menstrual cycles to avoid conflicts resulting from a possible pregnancy and confusion about the pedigree of the child. The insubstantiality of the act of *ṭalāk* generated a number of legal complications that will be addressed later in this chapter.³⁵

³³ The term *i'lā* denotes a man’s vowing not to have a connection with his wife or concubine; *Li'ān* is an invocation by a husband and wife when swearing to adultery charged by the husband against the wife and denied by the wife; *Zihār* is a husband repudiating his wife by saying to her, “you are to me as the back of my mother” —repudiation by that formula does not dissolve their marriage but renders conjugal intercourse unlawful until an expiation has been fulfilled by the husband: *Redhouse Lexicon*. For further information see also, Bilmen, II, 306-361.

³⁴ This phrase in Ottoman Turkish was the Arabic equivalent of “anti ṭalīqa” which literally means, “You are divorced”. The information regarding the terminology introduced here was referenced from H. İbrahim Acar, “Talāk,” *TDVİA* 39 (2010): 496-500; see also Joseph Schacht and Aharon Layish, “Ṭalāk” *EI2* (Brill Online, 2013); for a treatment of the other sunnī schools’ attitudes toward repudiation, see Susan A. Spector, ed. and trans., *Chapters on Marriage and Divorce: Responses of Ibn Ḥanbal and Ibn Rāḥwayh* (Austin, 1993), 50-52, 80, 250-253; Halil Cin, *Eski Hukukumuzda Boşanma* (Ankara: Ankara Üniversitesi Basımevi, 1976).

³⁵ Vogel assesses that this uncertainty stemmed from the act of *ṭalāk* being a purely verbal act. For a discussion of the many legal problems arising from the informal manner of utterance of *ṭalāk*, see Frank Vogel, “The Complementarity of *Ifṭā'* and *Qaḍā'*: Three Saudi Fatwa on Divorce,” *Islamic Legal Interpretation: Muftis and Their Fatwas*, eds. Muhammad Khalid Masud, Brinkley Messick, David S. Powers (Cambridge MA: Harvard University Press, 1996), 263.

The second category, *muhāla ‘ā or ḥul’*, was a wife’s request for formal separation from her husband at the expense of her dower portion, alimony, and waiting-period maintenance. *Ḥul’* was often resolved without the involvement of a judge provided that the wife obtained her husband’s consent prior to separation. The final category, *tefrīk*, which was atypical in the Ottoman hanafī context, was an annulment that required judicial intervention and did not necessitate the husband’s consent. In the sicils that I studied, the hanafī jurists of this period generally handled cases of annulment under the category of *ḥul’* settlements. Women could only retain the right to pronounce *ṭalāk* during their marriage if their husbands granted them the privilege at the time of the marriage agreement (*tafwīd’al-ṭalāk*).³⁶ Men who were leaving their conjugal households for war and for work related reasons would presumably grant the option of *tafwīd’al-ṭalāk* to their wives with certain stipulations. If a husband did not return during a specified period, the wife could initiate *ṭalāk*. This right was designed to provide economical benefits for the wife and to protect her from the ambiguities of single life if left without maintenance.

The court of the kadi provided equitable public hearing for all subjects’ disputes.³⁷ Ottoman women were active participants within the legal structure although

³⁶ This was, in fact, an option granted to the daughters of the *sultan*, as shown in the famous case of Şah Sultan, sister of Sultan Süleymān the Magnificent (1520-1566), who divorced her husband the Grand Vizier Lütflī Pasha in 1541. Royal women’s prerogative to initiate divorce was a safeguarding mechanism to give them the option to live independently, and therefore distinguishing them as the only women who possessed the authority to divorce their husbands. The cases of royal women initiating divorce, such as the one of Şah Sultan and Lütflī Pasha, and of Ulviye Sultan and İsmail Hakkı Bey (in 1922), are also discussed in İlber Ortaylı, *Osmanlı Toplumunda Aile*, 60. Peirce mentions this practice in *The Imperial Harem*, 204.

³⁷ See Engin Deniz Akarlı for a brief discussion of Islamic jurisprudence in his “*Maslaha* from ‘Common

their level of self-involvement and agency varied regionally and across time. They were able to plead against their husbands and file suits regarding family conflicts, property, and inheritance discords. One of the designated roles of the kadi was to act as the protector of women in court, in particular those who had been abandoned by their husbands without any maintenance.³⁸ The issue of divorce was of particular importance in terms of its social and economic consequences for women and the main reason women were adamant about registering their divorces in the kadi sicils. Since men had a unilateral and unhindered right of repudiation, they do not appear in court records as registrants of repudiation cases. Madeline Zilfi, in one of the pioneering studies on divorce in eighteenth-century İstanbul, argued that the registration of repudiation divorces

Good’.”

³⁸ Bilmen explains that under certain circumstances the kadi retains the authority to end the marriage of a husband and wife by *tefrîk*, since the kadi possesses a public force to end an unlawful situation that is harmful to one of the spouses [Bazı sebeplerden dolayı zevc ile zevce arası, hakimın hükmile tefrik edilebilir. Çünkü hakim, mütehakkak bir zarureti def için velayeti ammesi itibarile bu salahiyeti haiz bulunur]. Bilmen, *Hukukî İslamiyye* II, 204. See also Rapoport who worked on the economy of marriage and divorce in Mamluk society. Rapoport pointed out that, “The protection qāḍīs offered was limited. They rarely granted a judicial divorce against the wish of the husband, and were either incapable or unwilling to impinge too much on the patriarchal powers of the head of the household. As a result, most divorce negotiations were informal, and the role of the courts was mainly confined to putting an official stamp on the settlements brought before them” in Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (New York: Cambridge University Press, 2005), 74. Peirce further stresses the difficulties faced by women both in accessing the court and in making their voices be heard. Peirce explains, “Much work on Ottoman court records has rested on a facile assumption that courts were uniformly open to women. Yet as we have seen, there were some structural and procedural barriers to women in the Aintab court. Both jurisprudential debate and grassroots practice in Aintab communicated the message that female voices at court were problematic. At the same time, where females were not scripted into the court, they found alternate means to bring their voices to its stage” in Peirce, *Morality Tales*, 207. Given the level of attendance in court by women in the court records evaluated, it is arguable that the situation was somewhat more favorable toward women in İstanbul during the observed period. Nevertheless, this is not to suggest women did not encounter a number of challenges in presenting their cases both as witnesses and as litigants. See also Ahmet Akgündüz, *Şer‘iye Sicilleri*; Halil Cin and Ahmet Akgündüz, *Türk ve İslam Hukuku Tarihi* (İstanbul: Timaş Yayınları, 1990), vol. 1; Mehmet Akman, *Osmanlı Devleti’nde Ceza Yargılaması* (İstanbul: Eren Yayınları, 2004).

make a relatively rare appearance in the records compared to the assumption of its frequency in real life.³⁹ However, during the period of my inquiry, the records of the three different courts point to comparable numbers of repudiation cases registered (Figures 2.21 to 2.23). Hence, it seems that recording divorce cases served as proof of a woman's status, enabling her to summon alimony and possibly remarry, and also provided an arena for her to be publicly and formally heard.

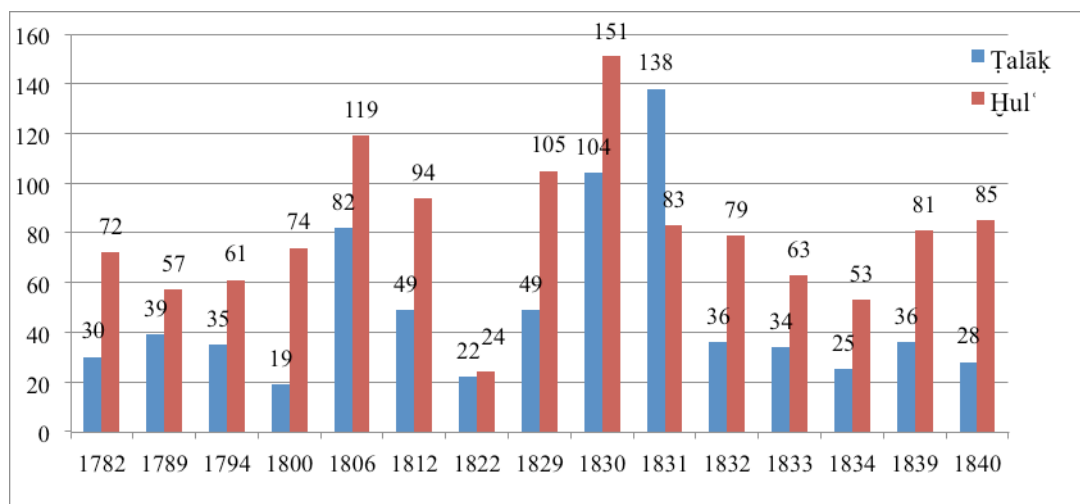


Figure 2.21 Yearly number of *Talāk* and *Hul'* Cases Registered in the Dāvud Pasha Court

³⁹ According to her assessment of the İstanbul Bāb records from the earlier part of eighteenth century, Zilfi observed that most of *talāk*-related entries did not directly concern the act of repudiation itself: “Although in these registers talak cases are disproportionately rare relative to their assumed incidence in society, numerous entries refer to talak either indirectly, in child support and dowry payment conflicts, or directly, when women asked the court to certify a talak divorce and enforce its terms” in Madeline C. Zilfi, “We Don’t Get Along”, 270. Judith Tucker, in her study of the eighteenth-century Syrian and Palestinian sicils, explained the scarcity of registered cases of *talāk* by men’s privilege of divorcing their wives without the mediation of a judge: Tucker, *In the House of the Law*, 79-84. For a more detailed discussion on the significance of *talāk* registration in court see Tucker, *Women, Family, and Gender in Islamic Law*, 86-87 and 104-105.

Figure 2.21 illustrates the number of *ṭalāk* and *ḥul'* cases in the Dāvud Pasha court. The sample data point to a unique phenomenon that only occurred in the sicils of this court. Except for the years 1830-31, the *ḥul'* cases registered surpassed the number of *ṭalāk*. This date coincides with the beginning of the Egyptian campaign to occupy Syria, leading to the 1832 Battle of Konya in which the Ottoman army was routed by Egyptian forces. Although we can speculate that the absence of husbands who were fighting in the warfront affected the initiation of divorce by their wives, there is insufficient evidence to draw such a conclusion. It is also possible to argue that the husbands who were mobilized had granted their wives the option of divorce in the event that they did not return from war. To assess this argument's worth, we shall consider other instances of military campaigns below. In 1821-22, *ṭalāk* and *ḥul'* registries were at par, and their total represented the lowest number of divorces registered in this court. It is probably no coincidence that the years when *ḥul'* registrations surpassed *ṭalāk* registrations by more than twofold were 1781-82, 1799-1800, 1828-29, 1838-39, and 1840.

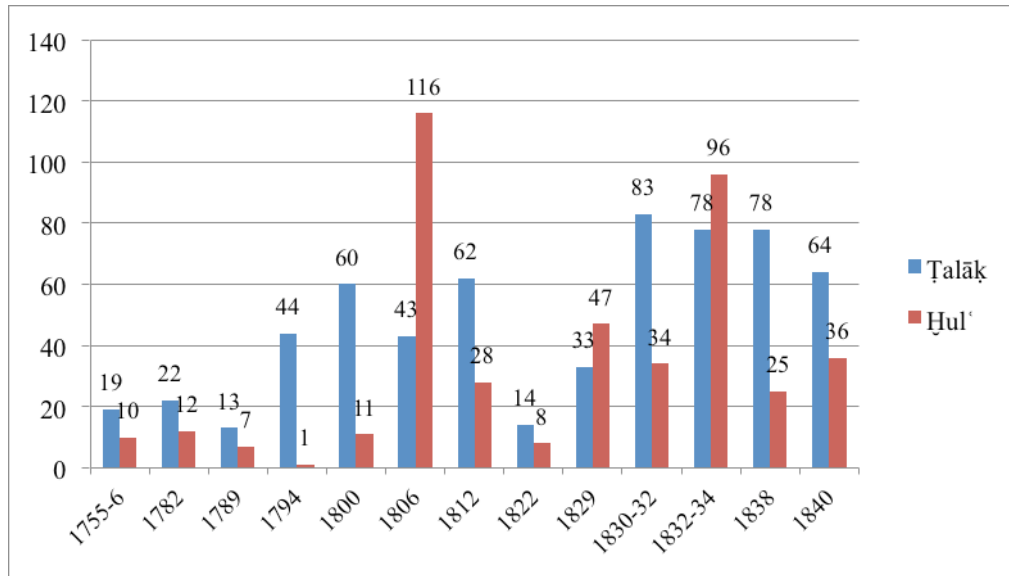


Figure 2.22 Yearly Number of *ʿTalāk* and *ʿHul'* Cases Registered in the İstanbul Bāb Court

Figure 2.22 illustrates the ratio of *ʿtalāk* and *ʿhul'* cases registered in the İstanbul Bāb court. To provide a diachronically comparative perspective, I have chosen to begin my analysis of the records of the İstanbul Bāb and Aḥī Çelebi courts with the ledgers comprising the years H. 1197-98 (1755-56 A.D.). The rate of divorce is significantly lower between 1755 and 1794. Unlike the Dāvud Pasha court, the number of *ʿtalāk* registrations in this court surpassed that of *ʿhul'* except for the years 1805-06, 1828-29, and 1832-34. The results, therefore, indicate that *ʿtalāk* was the dominant category of divorce registered in the İstanbul Bāb court. Although there was a high number of divorces registered, it was lower than the number registered in the Dāvud Pasha court. In the İstanbul Bāb court records, there is a wide range of difference between registrations

of *ṭalāk* and *ḥul'* during the years 1799-1800, 1811-1812, 1830-32, and 1838-1839, with the number of registered *ṭalāk* cases more than double the registered *ḥul'* cases. It is significant that this occurrence is inversely proportional to the *ṭalāk* and *ḥul'* registrations during the same years in the Dāvud Pasha court.

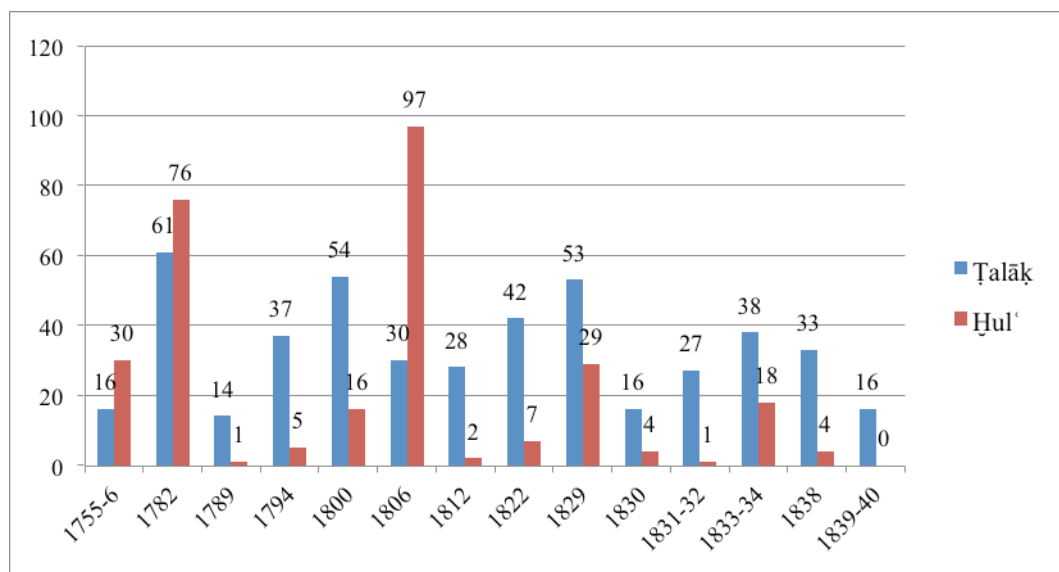


Figure 2.23 Yearly Number of *ṭalāk* and *ḥul'* Cases Registered in the Aḥī Çelebi Court

Figure 2.23 illustrates the proportion of *ṭalāk* and *ḥul'* cases in the Aḥī Çelebi court. Since the records of this court preexisted those of Dāvud Pasha, my quantification of the data starts with the ledger comprising the year between H. 1197 and 1198 (1755-56 A.D.), as was the case of the İstanbul Bāb court. The number of divorce cases registered

in this court was significantly lower than those of the Dāvud Pasha and İstanbul Bāb courts. Thus, the Aḥī Çelebi court again offered an exception. As in the previous case, *ṭalāk* seems to have been the dominant form of divorce registry in this court, except for the years 1755-56, 1781-82, and 1805-06 during which *ḥul'* registry surpassed the registry of *ṭalāk*. In the years 1789-90, 1800-01, 1821-22, and 1839-40, there was a radical gap between the rates of *ṭalāk* and *ḥul'*, with *ṭalāk* leading the way. It is also worth noting that in 1839-40 there were no *ḥul'* cases registered in this court.

It was remarkable that the proportions of *ṭalāk* and *ḥul'* registered corresponded in terms of the increases and decreases in total divorce rates in the Dāvud Pasha and the İstanbul Bāb courts. This correspondence indicates the possibility of there being a general inclination towards the registry of divorce. Hence, it is important to evaluate these fluctuations within this context to gain a more comprehensive perspective on divorce patterns in Istanbul. The years analyzed comprise a period of transformation effected by the ongoing wars with Russia, Austria, Iran and Egypt; economic instability, and internal revolts in response to the reforms that were introduced, such as the New Order (*Nizām-ı Cedīd*) and the new army that was created by Selīm III, which produced devastating consequences from those who were strongly against the attempts at reform.

The rise in registrations of *ṭalāk* and *ḥul'* could be explained by a variety of social, political, and economic incidents. One of the foremost reasons for this increase seems to have been the ongoing wars with Russia and Austria that took place in 1768-74, 1787-92

(and solely with Austria in 1788-91), 1806-12, and 1828-29.⁴⁰ For instance, the 1828-29 war with Russia instigated considerable terror in Istanbul. Social anxiety prompted by a number of significant occurrences may have affected the populace during these years. Apart from the cyclical wars with Russia and war with Austria (which had drastic economic and political impacts such as the fluctuations in the monetary system and the loss of domination in the Black Sea) such incidents as the deposition of the Sultan following the revolt in 1807 against the New Order established by Selim III must have indirectly affected matrimonial relations in the city. For instance, in 1826 Sultan Maḥmūd II ordered the destruction of the Janissaries in Istanbul, after which a vast number of men belonging to the military class lost an important part of their income.

Mobilization of men to the warfront seems to have had a considerable impact on married life. An instance that might be representative of this argument is the issuing of a decree by Sultan Maḥmūd II in July 1828 commanding the kadi of Istanbul and Serāsker Hüsrev Pasha to collect suitable men from each neighborhood to fight against the Russians. The decree stated that Istanbul was at great risk because the Russian forces had crossed over the Balkan mountains. In August 1829, with the entry of the Russian army into Edirne, a second imperial decree commanded the mobilization of 4,000 to 5,000 men from each neighborhood who were to gather in the Dāvud Pasha Sahrā. The mandate was retracted upon the issuance of a peace treaty between the Russians and the Ottomans in

⁴⁰ See Virginia H. Aksan, *Ottoman Wars*; the *rūznāme* whose author is unknown, is an account of the author on the daily incidents in Istanbul, which he deems as significant during the 1769-1774 war with Russia: Süleyman Göksu comp. *Müellifi Mechûl Bir Rūznâme*.

Edirne at the end of August 1829.⁴¹ The fact that this incident coincided with the high number of divorce registrations in the three courts might be proof of the fact that men who were mobilized granted their wives the right to initiate divorce after taking into consideration the possibility of never returning home. This example shows how certain outside pressures can affect people's choices during times of crisis. A similar pattern can be seen in the narrative by the seventeenth-century historian, Na'īmā. In his account of the rebellion in Üsküdar led by the rogue sipāhi Gürcü Nebī, the brother of the Grand Vizier Gürcü Mehmed Pasha, in 1649, Na'īmā states that Gürcü Nebī was the only one with sufficient means to provide his militia with a convoy of animals, and so for this reason, he had pronounced his wife — who lived in Niğde in central Anatolia — divorced so that she would not hope for his return. Na'īmā further reported that Gürcü Nebī gathered all the property he had amassed in fifteen years and turned it into cash.⁴² This particular anecdote clearly demonstrates that it was common for men who were mobilized—or in this case, who planned an organized upheaval in a distant land—during the seventeenth century to use irrevocable repudiation to absolve their wives from suffering the consequences of waiting for them. As a result of long campaigns away from home, it was common for soldiers to grant their wives the right to initiate divorce in the

⁴¹ Sedat Kaynak Bingöl, “İstanbul’da 1829 Nüfus Sayımı,” 48.

⁴² Na'imâ Mustafa Efendi, *Târih-i Na'îmâ (Ravzatü'l-hüseyin fî hulâsati aḥbâri'l-hâfîkayn)*, cild III, Mehmet İpşirli haz. (Ankara: Türk Tarih Kurumu Yayınları, 2007), 1227. For more on Gürcü Nebī see also pp. 1221-1232; for a treatment of the rebellion led by this character, and the great unrest it generated in Istanbul, Marc David Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008), 58-59; Karaçelebizade Abdülaziz Efendi, *Ravzatü'l-ebrâr zeyli* (Tahlîl ve Metin), 1732, ed. Nevzat Kaya (Ankara: Türk Tarih Kurumu Basımevi, 2003), 28-29 and 43-45.

form of repudiation, which ensured their wives' and children's maintenance in case they did not return.⁴³ Although the incident related by Na'imā would explain the rapid increase of divorce registration in 1830s, it also is questionable considering that this line of thinking cannot be used for explaining the rapid rise in 1806. However, it should be considered among the many factors that produce certain results regarding the family life in the urban sphere. Even if the coming together of certain factors produce certain consequences, it is also possible that the same factors could produce different results depending on the existence of different variants.

One such variant that had a direct impact was the high rate of inflation and rapid devaluation of the currency in the late eighteenth century. Even if the late-sixteenth century is recognized as a time of high inflation rates, the quantitative statistical data published by Şevket Pamuk shows that the late-eighteenth century witnessed a much stronger wave of inflation that lasted well into the 1850s. During the period from 1769 to 1843, prices increased twelve to fifteen times.⁴⁴ Pamuk identified the two major causes of inflation as debasements and price increases. The debasements began in the 1780s and

⁴³ Peirce makes a similar assessment in her study of the Aintab sicils suggesting that "War may account for the men who simply disappeared from Aintab and did not return. Intentionally or not, some of these men who vanished left their wives utterly without resources. This predicament forced the wives to appeal for public assistance, which was by law disbursed by the local judge" in Leslie Peirce, *Morality Tales*, 81.

⁴⁴ Şevket Pamuk, "Prices in the Ottoman Empire," 451-468; Pamuk, "Appendix: Money in the Ottoman Empire". Our knowledge of Ottoman price indexes and inflation rate in the late eighteenth century is enhanced by the various studies of Pamuk; however, earlier research by a number of scholars have also contributed to our understanding of statistical figures for the period before. These works include Yavuz Cezar, *Osmanlı Maliyesinde Bunalım ve Değişim Dönemi: XVIII. Yüzyıldan Tanzimat'a Mali Tarih* (İstanbul: Alan Yayıncılık, 1986); Mehmet Genç, *Osmanlı İmparatorluğunda Devlet ve Ekonomi* (İstanbul: Ötüken, 2000); idem, "XVIII. Yüzyılda Osmanlı Ekonomisi ve Savaş," *Yapıt: Toplumsal Araştırmalar Dergisi* 49, 4 (1984): 51-61; Yücel Özkaya, *18. Yüzyılda Osmanlı Toplumunu* (İstanbul: YKY, 2008), 245-293; Mustafa Akdağ, *Türk Halkının Dirlik ve Düzenlik Kavgası* (Ankara, 1975), 460-465.

continued throughout the reign of Sultan Maḥmūd II (r.1808-1839) when the silver content of gürüş decreased at an annual rate of 3.49% while prices rose at an annual rate of 3.81% in the years 1769 through 1843.⁴⁵ The effect of the inflation rate and debasements was strongest on those with fixed incomes paid by the state.⁴⁶ The sudden rise of divorce rates in 1828-29 indicates the direct impact that economic and political transformations had on marital relations. The abolition of the Jannissaries in 1826, eliminated the force of their protests against debasements. In 1828, two years after the Jannissary Corps was abolished, the state began the greatest series of debasements in its history, reducing the specie content of gürüş by seventy-nine percent in the period of four years.⁴⁷

The sharī'a regarded the husband and wife as separate economic entities. According to this view, the husband and wife could own property separately and have incomes both during and after their marriage. A woman could safeguard the sole right to her property without being legally bound to share ownership with her husband.⁴⁸ The

⁴⁵ Pamuk, "Prices in the Ottoman Empire," 456 and 468.

⁴⁶ Pamuk states that among these groups were government bureaucrats, ulemā, and especially the Janissaries, in *Ibid.*, 462.

⁴⁷ *Ibid.*, 463.

⁴⁸ There were quite a few instances concerning the allotment of property and monetary funds between the husband and wife in the sicils. In 1790, a certain el-Ḥāc Ḥalīl ibn el-Ḥāc Aḥmed, father of Ḥadīce, who was a minor, negotiated her divorce in court. El-Ḥāc Ḥalīl demanded Ḥadīce's then husband Muṣṭafā Çelebi to return the "bā'defer-i müfredat eşya-yı malūme" (the known possessions) of Ḥadīce. The father managed to take from his son-in-law the assets brought into the marriage by Ḥadīce. As a result, Muṣṭafā Çelebi was absolved from all cases regarding "huḳūk-u zevciyyet" in *IBM* 209 (1755-56), 1/8. A married couple could also buy property from one another—another aspect of the separate ownership of property between a couple: "In June 1790, es-Seyyid Muṣṭafā ibn es-Seyyid Meḥmed sold half of the shares of his house to his wife Faṭma bint-i Muṣṭafā for a sum of forty gürüşes. *DPM* 15 (1790), 28/7. 'Āyşe bint-i Yūsūf's agent Muslī Agha ibn Meḥmed stated her claim regarding her husband, Meḥmed Beşe ibn

existence of such examples demonstrate that even if a woman decided to grant ownership of a property to her husband, she preferred to register the matter in court. Although it is not possible to identify the paths women pursued after getting divorced, we can assume from the few court cases that most women preferred to remarry rather than return to their parental household. According to the sicils of the three courts, the Dāvud Pasha court accumulated the most divorce registration entries by women and the lowest dower averages. This important finding suggests that women of lower economic means more frequently registered divorce cases in court, possibly due to their urgent need for funds.

Repudiation (*Ṭalāk*)

The two commonly practiced categories of repudiation (*ṭalāk*) were *ṭalāk-ı bāin* and *ṭalāk-ı ric'ī*.⁴⁹ *Ṭalāk-ı bāin* was an irrevocable divorce ending the marriage union immediately after the husband pronounced his wife divorced for a third time. *Ṭalāk-ı*

Muṣṭafā, of the Hoca Hüsrev neighborhood. Accordingly, 'Āyşe absolved her husband from her claim to the mehr of ten gurushes. In addition 'Āyşe gave her husband the twenty-two dirhams, a pair of gold bracelets, and two gold rings that were in her possession. 'Āyşe sold other household possessions such as kitchenware and bedding to her husband for the sum of thirty gurushes, *İBM* 209, 23/3.

⁴⁹ Acar, "Talāk," 496-500; Ronald C. Jennings, "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640," *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries ~ Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (Istanbul: The Isis Press, 1999), 522: "Islamic divorce in a form other than hul' carried with it the liability that the pair could not marry again until the woman had legally been married with and divorced by another man...hul' although it constituted only a single divorce, was considered irrevocable only if the husband had intended divorce, not if the husband had offered divorce at the request of the wife. With hul' so arranged, the pair could freely resume marriage should they desire."

ric ʾī, was a revocable repudiation allowing the husband to retract his statement if he changed his mind after pronouncing divorce. Under that category, the husband was expected to retract the *ṭalāḳ* before the completion of his wife's waiting period (*ʿidda*) in which case they could remain together without being obliged to renew their marriage contract. The three-month waiting period assured the continuity of the marriage, allowing the husband the flexibility to withdraw his statement. The *ʿidda* —lasting the duration of the wife's three menstrual cycles —served to sustain the divorcee while the court ascertained the paternity of a child. In the event of pregnancy during the pronouncement of *ṭalāḳ*, a woman was required to wait until after the birth of her child before her waiting period was considered complete.⁵⁰ Even when a minor girl's husband passed away, an *ʿidda* of three menstrual cycles was imposed on her.⁵¹

When revocable *ṭalāḳ* occurred, the conjugal pair would still be responsible toward one another. For the woman, the waiting period was an interim phase in which she was considered neither married nor divorced. If the husband divorced his wife by a *ṭalāḳ-ı ric* ʾī, he could opt to return to her. In contrast, if he divorced her by *ṭalāḳ-ı bâin*, he no longer had sexual access to her.⁵² In her assessment of the Islamic jurists' opinions on

⁵⁰ Burhan al-Din ʿAlī ibn Abī Bakr Al-Marghinānī, *Al-Hidaya: Sharh Biyyat al-Mubtadi* (Cairo: Far al-Salam, 2000), 622; for a discussion of different jurists' take on the variations in a woman's waiting period see Tucker, *Women, Family, and Gender in Islamic Law*, 101.

⁵¹ “*Mes’ele*: Hind-i sağırenin zevci Zeyd fevt olsa Hind’e Zeyd’dan ʿiddet lazıme olur mu? *El-cevap*: Olur.” Trans.: “*Question*: If Zeyd, the husband of the young Hind passes away, would she be obliged to complete an ʿidda period? *Response*: Yes, she would,” in *Behçetü’l-Fetāvā ma’an-nukul*, 105.

⁵² The chief jurisconsult Yeñişehirli ʿAbdullāh Efendi explained in a fetva that if a man made an oath to his wife saying “if I tell such and such to your son, then anyone I married and will marry should be divorced,” the wife is divorced by *ṭalāḳ-ı ric* ʾī. If the man decided to return to his wife during her *ʿidda* his previous oath did not apply. See Yeñişehirli, *Behçetü’l-Fetāvā*, 91.

women's states during the *'idda*, Judith Tucker pointed to major dissimilarities between the genders.⁵³ During the waiting period, a man was free to marry another woman, while a woman was not. A fetva of Yeñişehirli 'Abdullāh Efendi also corroborates this inequality:

Question: There is a man who told his wife that should he take another wife (while being married to her), that (first) woman should be irrevocably divorced from him. After he stated this, he divorced her with a *ṭalāk-ı bāin* and married another woman during his first wife's *'idda* period. According to the man's previous oath, would the second wife be irrevocably divorced from him? *Response:* No, she would not.⁵⁴

Given the strict regulations governing the waiting period, if a woman married another man without completing her *'idda*, her marriage would immediately be annulled (*faskh*).⁵⁵ The waiting period's specifications were determined and applied according to the precise case of each woman. An example of this is a fetva regarding the remarriage of a woman before the completion of her pregnancy. Accordingly, if a man divorced his pregnant wife by an irrevocable *ṭalāk*, and she married another man consummating the

⁵³ Tucker, *Women, Family, and Gender in Islamic Law*, 103.

⁵⁴ “*Mes’ele:* Zeyd zevce-yi medhül bihâsı Hind’e üzerine her kimesneyi tezvîc edersem üç ṭalāk boş olsun dedikten sonra Zeyd Hind’i bir ṭalāk-ı bāin ile taṭlîk edip ba’dehu Hind’in ‘iddeti içinde Zeyneb’i tezvîc eylese Zeyneb şart-ı mezbûra binâ’en Zeyd’den üç ṭalāk boş olur mu? *El-cevap:* Olmaz.” Trans.:

“*Question:* Zeyd says to his consummated wife Hind that if he were to marry someone else while they were still married, that this second wife should be divorced from him by a thrice ṭalāk. Zeyd then divorces Hind by a ṭalāk-ı bāin and marries Zeyneb during Hind’s *'idda* period. Given his previous conditional statement, would Zeyneb be divorced from Zeyd? *Response:* No she would not,” in Ebü'l-Fadl 'Abdullāh Yeñişehirli, *Behçetü'l-Fetavā ma'an-nukul*, 90.

⁵⁵ Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku* (Istanbul: İlahiyat Fakültesi Vakfı Yayınları, 1985), 123.

marriage before she gave birth to the child, her marriage would be annulled. The woman was not allowed to remarry the father of her child immediately.⁵⁶

In this regard, the suit of Ḥadīce, daughter of Ḥasan, is an interesting case of *'idda* and remarriage.⁵⁷ Ḥadīce was present in court along with her witnesses while her ex-husband, es-Seyyid Meḥmed Said, was not. Before the hearing of Ḥadīce's testimony, the court evaluated the statements of two Muslim male witnesses (*ṣuhūd ul-hāl*), who were inhabitants of Ḥadīce's neighborhood, Mirāhor. In their account, Molla Süleymān and es-Seyyid Muṣṭafā testified that they had witnessed es-Seyyid Meḥmed Said's divorce of Ḥadīce by an irrevocable *ṭalāk* on April 25, 1782 (H.1197). When Ḥadīce was interrogated, she stated that it had been exactly sixty-four days since her aforementioned divorce and that she had menstruated three times during this period. The main problem with Ḥadīce was the claim that she had three menstrual cycles within sixty-four days, explaining that she had one immediately after the divorce. Ḥadīce emphasized that she had her menstrual period after the divorce —meaning she had duly completed her *'idda* —and that her remarriage to someone else was permissible by law. The court found Ḥadīce's claim plausible and permitted her to remarry.

⁵⁶ “*Mes’ele*: Zeyd zevcesi Hind-i ḥāmlı üç ṭalāk ile taṭlīk ettikten sonra Hind vaḡ-ı ḥāmlı ettikten sonra neḥsini ‘Amr’a tezwic edip ‘Amr daḡı Hind’i vaṭı’ edip ba’dehu Hind ‘Amr’dan tefrīk olunsa taḡlīl-i şer’i ḥāsil olup Zeyd Hind’i tezwic etmek cā’iz olur mu? *El-cevap*: Olmāz.” Trans.: “*Question*: After Zeyd divorced his pregnant wife Hind by a thrice ṭalāk, Hind married ‘Amr after giving birth. After she has had sexual intercourse with ‘Amr she was divorced from him by tefrīk. After the situation is investigated and affirmed, would it be possible for Zeyd to remarry Hind? *Response*: No it would not,” in Yeñişehirli, *Behçetü’l-Fetavā ma’an-nukul*, 98.

⁵⁷ DPM 2, 5/8 (1782).

After an irrevocable *ṭalāk* occurred, the husband was required to grant his wife her deferred dower and alimony dues. Although Islamic law favored men in the issue of divorce, *ṭalāk* was not without its legal consequences. One of the key modes to control inappropriate pronouncement of *ṭalāk* was the restriction that divorced couples could not immediately remarry each other. If a couple decided to remarry after being divorced by irrevocable *ṭalāk*, the woman was bound to consummate marriage with another man (*ḥulle*). The original couple could then remarry after the completion of the wife's subsequent divorce.⁵⁸ The requirement of *ḥulle* was a critical influence on the arbitrary utterance of *ṭalāk*, forcing the husband to reassess his decision.

The sharī'a tolerated women's petitions for the annulment of their marriages in the face of their husbands' failure to provide maintenance, mental and physical illness, physical violence, desertion, and impotence.⁵⁹ The entitlement to divorce also allowed women to remarry, which was another way of securing their livelihood. Although women's remarriage was not a systematically recorded instance in the documents, the

⁵⁸ Jennings, 522: "Islamic divorce in a form other than *hul'* carried with it the liability that the pair could not again marry until the woman had legally been married with and divorced by another man... *Hul'*, although it constituted only a single divorce, was considered irrevocable only if the husband had intended divorce, not if the husband had offered divorce at the request of the wife. With *hul'* so arranged the pair could freely resume marriage should they desire."

⁵⁹ Araz explains that in divorces initiated by women, the *ḥanafī* law only reckons male-specific physical deficiencies and illnesses that impede copulation as acceptable grounds for divorce. It was lawful for a woman who was separated from her husband by a *faskh* to collect her dower (*mehr*) and alimony (*naḥāka*), since the divorce was initiated by the husband, in Yahya Araz, "Kadınlar, Toplum ve Hukuk: 16. ve 17. Yüzyıl Osmanlı Toplumunda Eşleri Tarafından Terk Edilen Kadınlar," *TTYY* 6 (Güz 2007- Kış 2008), 69. Mehmet Akif Aydın further adds that *ḥanafī* law does not recognize a similar deficiency in women as cause for divorce since the husband has unilateral entitlement to divorce in Mehmet Akif Aydın, "Osmanlı Hukukunda Kazai Boşanma –Tefrik," *OA* V (1986), 6. On the differences between *ṭalāk* and *faskh* see Bilmen, *Hukukî İslamiyye*, 19; Zarinebaf discusses the different reasons for which women were allowed to petition for divorce in the seventeenth century: Fariba Zarinebaf-Shahr, "Women, Law, and Imperial Justice in Ottoman Istanbul," 92.

cases in the sicils illustrate that it was considered a regular fact of life, especially when the former husband had been absent for a significant period.⁶⁰ According to the testimony of Şerīfe ‘Āyşe, daughter of es-Seyyid İbrāhīm, who was divorced by *hul* ‘ from her husband, Çādırıcı Hasan Eşref Agha, son of Halīl, who was not present in court, she had completed approximately sixty-five days of her waiting period before she requested permission for her remarriage from the *kadi*.⁶¹ In a similar case, Şerīfe ‘Āyşe, daughter of el-Hāc Muştafa, who was already divorced from her husband, Meḥmed Şālīḥ Efendi, son of el-Hāc Muştafa by a *hul* ‘, requested permission from the *kadi* for her remarriage only seventy days after she had been divorced.⁶² Hence, it seems that women were inclined to contract remarriage within their *‘idda* period after the dissolution of their previous marriages. These two cases, categorized as *izn-i taḥlīf*, were the only two entries in the Dāvud Pasha court regarding women’s request for permission to remarry during the ten years between 1829 and 1839.

⁶⁰ Hunt’s comparative study of the social, economic, and political position of women in eighteenth-century Europe also treats the issues of women in the Ottoman lands. Accordingly, her statement regarding the attitudes towards remarriage in Cairo confirms my argument regarding perceptions concerning remarriage in Istanbul. Hunt states, “in one sample of two hundred marriage contracts from seventeenth-century Cairo, thirty percent of women had been married before, and women marrying again put many more conditions into their contracts. These included provisos like the following: the couple had to live next to her sister, the wife must be allowed to carry on her trade, she was to be allowed to go on pilgrimage, she was to be free to visit the public baths. Many women also added clauses forbidding the husband from taking a second wife or a concubine (usually the penalty was that the woman would be immediately divorced if the condition was broken, and have her mehr returned intact)” in Margaret R. Hunt, *Women in Eighteenth-Century Europe* (Great Britain: Pearson Education Limited, 2010), 75; for more on this, Nelly Hanna, “Marriage and the Family in the 17th Century Cairo”.

⁶¹ DPM 87, 1/4 (3 March 1829).

⁶² DPM 87, 1/5 (4 March 1829).

The processes and means resulting in the registration of divorces, particularly by women, demonstrate the nature of spousal relationships to a certain extent. The registration of divorce generally took place after the actual repudiation had occurred among the couple. Rather than husbands publicly proclaiming the repudiation of their wives, the records show that it was the wives who felt the necessity of registering their divorces in court. The absence of comprehensive data concerning Istanbul during this period makes it impossible to measure the demographic proportions of divorce. Nevertheless, it can be deduced that the gradual increase in divorce registrations by women during this period illustrates the importance of their agency and self-representation in obtaining improved rights within marriage and possibly within society at large.

The case presented by Hesna, daughter of Aḥmed, a resident of the es-Seyyid ‘Ömer neighborhood, is an example of a man granting her entitlement to initiate divorce before leaving her.⁶³ In her statement, Hesna claimed that in November 1782 (H.1196), her husband, el-Ḥāc ‘Abd’ul-qaḍīr, son of el-Ḥāc Meḥmed, said in the presence of witnesses that if he were to leave Hesna to go to another place, she should be considered divorced from him. Hesna continued by claiming that her husband left for a distant town in July of the same year, after which she was automatically separated (*mübāne*) from him. The case was registered exactly one year after this incident, in the absence of el-Ḥāc ‘Abd’ul-qaḍīr. Hesna provided two witnesses to confirm her statement. Although there

⁶³ DPM 2, 41/3 (1782 A.D.).

is no record of an official divorce, this case demonstrates how women managed the repercussions of being left by their husbands.⁶⁴ Hesna's husband's initial action may have stemmed from his reluctance to leave her without any maintenance. In instances when a husband left and did not return, the court would usually provide the wife with weekly maintenance, to be later deducted from the husband's property. The husband, as a result, would be indebted to the state for the amount of maintenance paid to his wife during his absence.

When women were unable to attend court, they appointed a proxy to handle their negotiations. One such case is the *ṭalāk* registration of Emīne, who was represented in the Dāvud Pasha court by her father, Meḥmed Necīp Efendi, son of Meḥmed.⁶⁵ Emīne, a resident of the Dāvud Pasha neighborhood, married İbrāhīm Agha, son of el-Ḥāc Aḥmed for a promised dower of one hundred gurushes. When İbrāhīm Agha divorced Emīne with an irrevocable *ṭalāk*, he agreed to give her the one hundred gurushes and an additional sum of thirty gurushes to compensate for her waiting period and alimony. Emīne also requested the assets gained from selling their joint property while they were

⁶⁴ Yahya Araz has also observed that women generally waited for a long time before going to court to demand their maintenance from husbands who deserted them. Araz explained the reason for such a lapse by suggesting that women chose to apply to court only after they had spent all of their resources, Araz, 70-71; for a treatment of the subject of women's desertion by their husbands: Zečević suggested that in Ottoman Balkans, kadis often bent the rules in an attempt to give women whose husbands had gone missing enhanced rights over the man's estate, in Selma Zečević "Missing Husbands, Waiting Wives, Bosnian Muftis: Fatwa Texts and the Interpretation of Gendered Presences and Absences in Late Ottoman Bosnia," *Women in the Ottoman Balkans: Gender, Culture, and History*, eds. Amila Buturović and Irvin Cemil Schick (New York: I.B. Tauris, 2007), 335-360; Abdal-Rehim Abdal-Rahman Abdal-Rehim, "The Family and Gender Laws in Egypt During the Ottoman Period," *Women, the Family, and Divorce Laws*, 96-112; Robert C. Jennings, *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries*, 106-108.

⁶⁵ *DPM* 2, 57/6 (1782).

married, which was approximately 420 gurushes. When İbrāhīm Agha refused to pay the total of 550 gurushes as compensation for the *ṭalāk*, a serious disagreement among the couple resulted. Mediators resolved this controversy, and İbrāhīm Agha and Emīne finally reconciled when he agreed to pay a total of 350 gurushes. After this arrangement, Emīne demanded the fee for their household help, Faṭma, daughter of Muṣṭafā. Since Faṭma was their employee during their marriage when the couple was sharing a household, İbrāhīm Agha agreed to pay the requested amount of fifty gurushes to his former wife. The case was resolved for a total of 400 gurushes.

It is apparent from this case that Emīne came from a fairly affluent family. When getting married, she had agreed to a dower of one hundred gurushes, which was well above the average dower amount of fifteen gurushes in the records of the Dāvud Pasha court for the year 1782 (*see* Figure 3.2 in the next chapter). The fact that Emīne could be so insistent in her demands might be a result of her father acting as her deputy in court. Emīne's request for her share from the property sale that took place during their marriage demonstrates women's claim to ownership. It seems that Emīne had come into the marriage with her own estate and property. During the separation, she may have paid Faṭma's wage from her own resources. Emīne had also contributed to her husband's property sales by adding her valuable belongings to the sale. After their divorce, it seemed reasonable that Emīne would demand her share from that sale. It was either the determination of Emīne's father or her own assertion during the divorce that compelled İbrāhīm Agha to repay the requested amount. As mentioned earlier, despite the law, many women did not receive their promised alimony and dower after *ṭalāk*. Hence,

Emîne's divorce represents one of the few instances in which a woman came close to reclaiming what she had invested during the marriage.

In a number of the *talāk* cases, I observed that women were only able to acquire a portion of their promised dower. For instance, the case presented in the İstanbul Bāb court by Faṭma in January 1755, illustrates the lengths to which women resorted to claim their rightful property.⁶⁶ Faṭma testified that she was repudiated by her husband, 'Abdullāh Beşe, by a *talāk-ı bā'in* six months prior to the recording of the case. She then demanded that the court warrant her husband to pay her deferred dower of eighteen gurushes. After 'Abdullāh Beşe was questioned about the matter, the two parties came to a resolution and 'Abdullāh Beşe agreed to give her only six gurushes.⁶⁷ In *talāk* repudiation, a husband was obliged to pay the full amount of the wife's dower and alimony that was negotiated among the couple. However, in this case a private negotiation among the spouses seems to have taken place prior to the registry of the

⁶⁶ *İBM* 209, 8/8 (1755-56).

⁶⁷ This was a recurrent incident in court. Other examples that support this argument are the case of 'Āyşe Hātūn who was divorced by her husband by a *talāk-ı bā'in*. Although her husband was supposed to pay her the full amount of her dower of twenty gurushes, he only paid eight gurushes. 'Āyşe Hātūn demanded her husband pay the remaining twelve gurushes as well as the equivalent value of her belongings (pots and pans, duvet covers, furs, etc.) that were worth twenty-two gurushes. Her husband denied 'Āyşe's claims and stated that she had already received the aforementioned amount from him, in *İBM* 209, 13/3 (1755-57); A similar case was presented in court by a certain Faṭma, daughter of Ḥasan, regarding her husband, Küçük 'Alī Agha ibn 'Alī in Balat's Kesmekaya neighborhood. Faṭma claimed that she was divorced by her husband by a *talāk-ı bā'in* three years before. Her husband had only paid eight gurushes of her fifteen-gurushes dower. She stated in court that she absolved her claims to the remaining seven gurushes, in *DPM* 15, 42/1 (1789); In the case regarding the divorce (*talāk-ı bā'in*) of Ümmügülsüm and Meḥmed of Kātip Müslühüddin neighborhood, she renounced claims to her dower, accepting instead her husband's payment of a daily maintenance fee of ten akças until the end of her pregnancy, in *DPM* 15, 50/1 (1789); Faṭma, daughter of 'Abdullāh, who was irrevocably divorced by her husband, Ḥüseyin ibn Aḥmed of the Canbāziye neighborhood near Koca Muṣṭafā Pasha district, settles for only ten gurushes of the twenty-five gurushes dower and five gurushes maintenance that her husband is supposed to pay her, in *DPM* 15, 51/1 (1789). See *İBM* 209 (1755-57) 6/2, 8/2, 12/4, 72//7, 81/1 for other cases involving the same issue.

settlement in court. It also appears that in such instances the couple negotiated before deciding whether their divorce would be recorded as *ḥul'* or *ṭalāk*, settling on a certain amount that the husband would pay the wife.

The possibility of such negotiations is demonstrated by the existing divorce settlement cases in which women obtained neither the dower nor alimony fees. Hence, it also seems quite feasible that the couple's negotiation regarding the matter would be dominated by the husband's coercion of the wife to reduce his dues. Although these cases were recorded as regular *ṭalāk*, their outcomes were the same as those of *ḥul'*. The documents strongly suggest that active negotiation among the spouses determined the nature of divorce prior to its recording in court, if the case was ever presented in court. Even if according to the sharī'a *ṭalāk* seemed to be a more favorable type of divorce, and *ḥul'* appeared to have more negative outcomes for women, the existence of such cases of *ṭalāk* in which the wife did not receive any of her dower and alimony illustrates that these divorce categories were not clearly separated from each other and that there was an ambiguous area allowing a variety of other settlement strategies. Consequently, irrespective of how an actual divorce was negotiated, some couples were intent on having their divorce settlements registered in court.

Perhaps one legitimate reason for the registration of divorce was that judges were more favorable towards women, and if women managed to have their divorces recorded in court, this gave them a certain leverage and security. This point was previously raised by Dror Ze'evi, who seems to agree with Haim Gerber's observation that verdicts were statistically in favor of those whom we perceive to be at a disadvantage, such as women

and *zimmīs*.⁶⁸ The same assessment might have a bearing on the sicils evaluated; however, it is impossible to make such a general assessment based on only the evaluation of matrimony-related matters.

There were multiple instances in which women managed to obtain their rights after *ṭalāk* was in effect. ‘Āyşe, daughter of ‘Abdullāh, a resident of the İbrāhīm Pasha neighborhood in Silivri Kapı, presented herself in the Dāvud Pasha court in 1790, claiming that her husband, Meḥmed Beşe, divorced her with a *ṭalāk* twenty-four days earlier. She demanded the fifty-gurush deferred dower, which he had promised at the time of the marriage contract and an additional five gurushes as part of her alimony payment. When her husband was questioned, he did not contest the matter and paid his dues to his wife.⁶⁹ In the İstanbul Bāb court, a certain ‘Āyşe, (her father was not mentioned), stated that although she had been previously divorced from her husband, ‘Osmān, by a *ṭalāk-ı bā’in*, she was unable to obtain her delayed dower and alimony from him.⁷⁰ ‘Āyşe demanded from her husband a total of twenty-two gurushes, sixteen in lieu of her deferred dower and six for her *naḫaḫa*. ‘Āyşe’s statement was also confirmed by her sole witness, İmām Aḥmed Efendi, regarding the amount owed to her by ‘Osmān.

⁶⁸ Ze’evi, “The Use of Ottoman Sharī’a Court Records,” 55; Haim Gerber, *State, Society, and Law in Islam* (Albany: State University of New York Press, 1995), 56-57. Ze’evi has also suggested that “in many cases, qadis chose to believe women, ruling against the male parties. This may have reflected a shar’i practice, as the onus of proof is usually on the plaintiff. But needless to say, had qadis wanted to prevent women from obtaining justice, they could easily have found a way around these stipulations” in Ze’evi, “Women in 17th Century Jerusalem,” 164.

⁶⁹ DPM 15, 12/4 (1789).

⁷⁰ IBM 209, 31/5 (1755-57).

In certain instances, I determined that although the particular divorce settlements were registered as *hul*‘, they were in fact regular *talāk* settlements. The case presented by ‘Ümmettullāh regarding her divorce from her husband, es-Seyyid Meḥmed Çelebi, is an example of a *hul*‘ settlement registered as *talāk*.⁷¹ In her statement, ‘Ümmettullāh claimed that Meḥmed Çelebi had divorced her by a *talāk-ı bāin* twelve years before, promising to pay her the delayed dower in the amount of 2,400 akças. Given the recording date of this settlement, it is curious that ‘Ümmettullāh waited twelve years to inquire about her dower and alimony. When Meḥmed Çelebi was questioned in court regarding the matter, he stated that ‘Ümmettullāh had agreed to a *hul*‘ divorce in which she had absolved her right to the stated amount. Meḥmed Çelebi also brought in a witness, Hāfız Muṣṭafā Efendi, who confirmed that their divorce had been registered as *hul*‘ in the Dāvud Pasha court twelve years before. ‘Ümmettullāh eventually accepted her former husband’s statement since she could not produce any witnesses to support her claim.⁷² The dispute was settled by ‘Ümmettullāh receiving no funds. Given the restricted amount of data, it is difficult to determine whether she was forced by her husband to pretend that their divorce was *hul*‘

⁷¹ *İBM* 209, 36/7 (1755-57).

⁷² Boğaç A. Ergene and Leslie Peirce have argued that the unsubstantiated allegations of women in court might be indicative of their seeking an “extra-judicial objective.” In his examination of rape and sexual abuse-related cases in the sicils, Ergene questioned the motives for women’s allegations as plaintiffs in court, without the presentation of proper witnesses and substantial proof. In her assessment of similar court cases, Peirce argued that assuming that these women had prior knowledge of how things worked in court, it was probable that they did not necessarily come to court to achieve a favorable verdict, they came instead to make their cases heard publicly so their perspective was actually included in the registration process: Boğaç A. Ergene, “Why Did Ümmü Gülsüm Go to Court?” 216; Peirce, *Morality Tales*, 373. There is a healthy body of literature on the sharī‘a court’s procedures regarding the substantiation of allegations, see for instance, Cin and Akgündüz, *Türk ve İslam Hukuku Tarihi I*, 274-75, and 396-97; Akman, *Osmanlı Devleti’nde Ceza Yargılaması*, 19-26, and 35-36; Feridun M. Emecen, “Osmanlılarda Devlet, Toplum ve Mahkeme,” 73-81.

instead of *talāk*. Nevertheless, the case could serve as an example of the maneuvers that men employed to acquit themselves from the financial obligations of *talāk*. Given that ‘Ümmettullāh appeared to be unprepared to substantiate her allegations against her husband, she may have sought to have her case be heard and recorded regardless of the final verdict.⁷³

In 1755, Şāliḥa presented her case in court regarding her husband, Hüseyn. According to her statement, Hüseyn had previously divorced her by *talāk-ı bāin* without paying the delayed portion of her dower in the amount of twenty-five gurushes. Şāliḥa further informed that Hüseyn remarried her with the promise of twenty-seven gurushes. The record did not, however, mention Şāliḥa’s obligatory temporary marriage that would enable the couple’s remarriage. Ten days before the registry of this case, Hüseyn divorced Şāliḥa again by irrevocable divorce. As a result Şāliḥa demanded from him a total of fifty-seven gurushes and an alimony, which included the dower amount from her previous marriage to Hüseyn. In the end, Şāliḥa settled for the payment of only forty-five gurushes by Hüseyn.⁷⁴ It is evident in this record that Hüseyn initially wished to abandon his debt regarding the dower from their previous marriage, yet, he ended up having to own up to it after their second divorce. In this regard, the case demonstrates a woman’s active negotiation skills and assertiveness in claiming what is her right.

⁷³ See *DPM* 2 (1782), 23/4, 29/1, 30/2, 31/1, 72/5, 73/4, 73/6, 73/10, 73/12 for other examples of *hul* divorce registered as *talāk* in court.

⁷⁴ *İBM* 209, 58/10 (1755-57).

Conditional Divorce

Question: A man who told his mother, “My wife Ḥadīce shall be divorced if you go to your daughter’s house.” If the man’s mother visits her daughter, would his wife be divorced? *Response:* Yes, she would.

Question: Under these circumstances would his lawful wife, Ḥadīce, be divorced from him by a *ṭalāḳ-ı ric’ī* instead of a *ṭalāḳ-ı bāīn*? *Response:* Yes, she would.

Question: A man resides in a town where when one makes a conditional oath it is considered to mean “I divorce my wife.” This man makes a conditional oath by stating that should so-and-so enter his house, his wife should be divorced from him. When that person enters his house, his lawful wife is immediately divorced from him by *ṭalāḳ-ı ric’ī*. Would the man have the power of returning to her during her *‘idda* and continuing their marriage relations without the renewal of the marriage contract? *Response:* Yes, he would.

Yasincizāde Abdülvehāp Efendi⁷⁵

It is important to note that in eighteenth-century Ottoman practice, both the union and separation of a couple relied heavily on verbal contention. That said, there is a divergence between the conditions of marriage and that of divorce.⁷⁶ While marriage

⁷⁵ BOA, HAT, 340/no. 19441/i (29 Zilka’ade 1237/August 17, 1822):

“Mes’ele: Zeyd anası Hind’e kızın Zeyneb’in evine varırsan zevcem Ḥadīce boş olsun dedikten sonra Hind Zeyneb’in menziline varsa Zeyd’in zevcesi boş olur mu? El-cevap: Olur.

Mes’ele: Bu surette Ḥadīce medhul bihası olmakla vaki olan ṭalāḳ-ı bāīn olmayıp ric’ī olur mu? El-cevap: Olur.

Mes’ele: Şart olsun demek avratım boş olsun demek manasına muta’arif olan belde ahalisinden Zeyd halen kimesne menziline girerse şart olsun dedikten sonra ol kimesne Zeyd’in menziline girmekle zevce-yi medhul bihası Hind Zeyd’den ṭalāḳ-ı ric’īyle boş olsa halen Zeyd ‘iddeti içinde Hind’e müraca’at edip teccid-i nikāh etmemegin Hind ile izvaç mu’amelesine kâdîr olur mu? El-cevap: Olur.”

⁷⁶ Canbakal stated that, “One mechanism used to make a new contract legally recognizable is to couch it in a nominate binding contract by stipulating it as the latter’s condition (*şart zimne’l-‘akd*), even if the two clauses are quite unrelated in subject matter. In these cases, the condition is in fact the main transaction sought by the parties. Obviously, this structure closely parallels the structure of public vows, which are all conditional vows in which the condition defines the actual purpose of the promissor. The format “I vow to do x if I do y,” implies a negative intention, i.e. the intent not to do y. Here too, the condition and the vow are essentially unrelated. At the same time, the ‘condition’, being the primary objective of the act, the vow (*menzūr bih*) functions like a penal clause that dis-courages non-performance of the promise. As in medieval Europe, where

was contracted without being restricted to time and circumstance, conditional divorce either rested on a time restriction or depended on the realization of a provision.⁷⁷ Divorce by oath was an assertion of male dominance, since uttering an oath was a means to disciplining one's wife.⁷⁸ However, there were instances in the court records that imply that women forced their husbands to assert conditional statements in order to avoid dealing with their appalling habits and unpleasant behaviour.⁷⁹

contract enforcement was a major problem and the attachment of a penal clause was a common remedy, in conditional vows obligation and liability do not overlap," in Hülya Canbakal, "Vows as Contract in Ottoman Public Life (17th and 18th Centuries)," *ILS* 18, no.1 (January 2011): 85-115; Cin, *Eski Hukukumuzda Boşanma*, 57. See also, Bilgehan Pamuk, "Conditional Divorce," 11-122. On the sharī'a court's attempts to negotiate spousal conflicts and its mediating role in marital disputes: Erin Stiles, "Broken Edda and Marital Mistakes: Two Recent Disputes from an Islamic Court in Zanzibar," *Dispensing Justice in Islam*, 95-116; Immanuel Naveh, "The Tort of Injury and Dissolution of Marriage at the Wife's Initiative in Egyptian Maḥkamat al-Naqd Rulings," *ILS* 9, no. 1 (2002): 16-41; Ron Shaham, "Judicial Divorce at the Wife's Initiative: The Shari'a Courts of Egypt, 1920-1955," *ILS* 1, no. 2 (1994): 217-57; idem, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts 1900-1955* (Leiden: Brill, 1997).

⁷⁷ When a husband stated, "You will be divorced from me in three months," or "You are divorced from me on the first day of next month" divorce would be in effect. Hanafīs accepted this type of conditional divorce, its consequences being effective not immediately, but beginning with the point in time declared by the husband. For such a conditional divorce to be applicable, a husband had to be married at the time of his utterance of time-restricted divorce. Hanafīs' compliance with the proclamation "You will be divorced from me the moment I marry you," was unique in the sense that the other three Sunnī legal schools did not accept such a clause if the couple was not already married at the time it was uttered. On women's incentive for conditional divorces during the same period in Anatolia, see Saim Savaş, "Fetva ve Şer'iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılması", *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi II* (Ankara: Başbakanlık Aile Araştırmaları Kurumu Yayınları, 1992), 530; Hüseyin Özdeğer, *1463-1640 Yılları Bursa Şehri Tereke Defterleri* (İstanbul, Bayrak Matbaacılık, 1988); İsmail Doğan, "Osmanlı Ailesinin Sosyolojik Evreleri: Kuruluş, Klâsik ve Yenileşme Dönemleri", *Osmanlı V*, 371-396; Abdülkadir Donuk, "Çeşitli Topluluklarda ve Eski Türklerde Aile", *Aile Yazıları I, Temel Kavramlar Yapı ve Tarihi Süreç*, eds. Beylül Dikeçlil, Ahmet Çiğdem (Ankara: Aile Araştırmaları Kurumu Yayınları, 1991), 287-301.

⁷⁸ Bilmen, *Hukuku İslamiyye II*, 245; Cin, *Eski Hukukumuzda Boşanma*, 58. Judith Tucker points to the gender-based differentiation in terms of the sexes' access to divorce, "neither defects nor incompatibility were at issue here, since *faskh*, *hul'*, and simple *talaq* sufficed for those purposes. This type of divorce, or threat of divorce, appears to have been, in part, an accepted form of male social control, rather than a way to resolve intractable marital problems," *In The House of Law*, 80.

⁷⁹ Tucker suggested that women resorted to certain strategies to control their marital issues since it was almost impossible for them to initiate divorce without the approval of their husbands: "Rather than resorting to a Shafi'i or Hanbali judge, however, to annul a marriage in which the husband was not providing, some women managed to have their husbands swear a special oath to support them properly or divorce them. Should that support not be forthcoming, the divorce would be automatic and require no

The suit of Ḥanīfe regarding her husband, Muṣṭafā Beşe, illustrates how women strategized to attain divorce by oath.⁸⁰ Ḥanīfe, daughter of ‘Abdullāh, a resident of the Mevlūde Ḥāce Hātun neighborhood, presented her case concerning her husband, Muṣṭafā Beşe, son of Ḥüseyn, in the Dāvud Pasha court on May 31, 1783. In her testimony, Ḥanīfe claimed that a month prior to the recording of this case her husband took an oath that she should be divorced from him if he were to drink wine again. Three days before Ḥanīfe came to court, Muṣṭafā Beşe drank some wine, which caused her to be immediately divorced from him upon his covenant. Ḥanīfe demanded that the court warn Muṣṭafā Beşe to grant her the forty-gurushes dower and the additional alimony maintenance. When Muṣṭafā Beşe was questioned about the matter, he admitted that Ḥanīfe’s dower amount was forty gurushes, while denying that he had made such an oath. The court prohibited Muṣṭafā Beşe from drinking wine and advised Ḥanīfe to resume her marriage. It is apparent from the limited information provided in this record that Ḥanīfe aimed to obtain a *ṭalāk* divorce from her husband who was a wine drinker and for that

adjudication. Of course, a husband might deny that he had sworn to divorce, and then, as we have seen, the woman would have to shoulder the burden of proof. Still, it was possible for conditional divorce to operate very much to a woman’s advantage,” Ibid. 104.

⁸⁰ DPM 2, 76/5 (1782): “Mahmiyye-i İslambol’da Ḥāce Hātūn Maḥallesinde sâkine ve zâtı mu‘arrife Ḥanīfe bint-i ‘Abdullāh nâm hātun Dāvud Pasha Maḥallesi’nde meclis-i şer‘a zevci Muṣṭafā Beşe bin Ḥüseyn nâm kimesne mahzarında zevcim mezbûr Muṣṭafā Beşe târih-i i‘lâmdan bir ay mukaddem eğer ba‘de’l-yevm şîrb-i hamr ider isem şart olsun diyu ta‘lik eyledikden sonra târih-i i‘lâmdan üç gün mukaddem şîrb-i hamr itmekle şîrb-i mezkûrun vukû‘una binâen zevcim mezbûrdan mutâlaka olmamla zimmetinde ma‘kûdun-aleyh olan kırk gurush mehr-i mü‘eccelim ile nafaka-i iddet-i mu‘ayyene ve mu’tet (?) süknâ zevcim mezbûrdan hâlâ taleb iderim diyu ba‘de’l-da‘vâ ve’l-istintâk mezbûr Muṣṭafā Beşe dahi cevabında müdde‘iye-i mezbûre mihr-i mezkûr kırk gurush ile zevciye-i medhûlün-bihâsı olduğunu ikrâr lâkin şart-ı mezkûru bi’l-küllîye inkâr itmeğin müdde‘iye-i mezkûre ber-vech-i muharrer müdde‘âsının beyândan âcize ve talebiyle mezbûr Muṣṭafā Beşe ba‘de’t-tahlîfû’ş-şer‘î mûcibince müdde‘iye-i mezbûre Ḥanīfe Hātūn da‘vâ-yı mezkûresiyle zevc-i mezbûr Muṣṭafā Beşe’ye bilâ beyine.....mu‘ârazadan men‘ olundukdan sonra zevc-i mezbûr Muṣṭafā Beşe ile izdivâc mu‘âmelesi itmek üzere mezbûre Ḥanīfe Hātūn’a tenbîh olundu. Bi’l-iltimâs huzûr-ı âlîlerine i‘lâm olundu. Fî 28 Cemâziyelâhîr 1197.”

reason she resolved to create a story about him having stated such a condition. A *talāk* divorce would gain Ḥanīfe the financial security that a *ḥul* divorce could not offer. The fact that she did not provide any witnesses to her husband's alleged conditional statement could account for the judge's final decision.

A comparable case of conditional *talāk* was presented in court by 'Āyşe, daughter of Ḥasan, a resident of the Hobyār neighborhood in 1782.⁸¹ In her claim, 'Āyşe stated that three days before her arrival in court her husband, es-Seyyid Muşţafā, son of Ḥasan, took an oath that if he were to eat her bread then it should be a condition for their divorce, after which he performed the deed. 'Āyşe demanded her dower in the amount of eight gurushes and an additional sum as her alimony. As a result, the court ruled that 'Āyşe should receive four gurushes as compensation for the *talāk*. In the case of 'Āyşe, it appears that her husband found recourse in subjecting her to an immediate divorce by stating an act that he was just about to commit. The act itself was not controllable or avoidable by 'Āyşe. While her husband could have persuaded her to initiate a *ḥul* divorce, which would free him of his alimony and dower obligation, he probably was not able to convince 'Āyşe. Consequently, conditional divorce could be used by the spouses to receive a favorable settlement when it seemed to be unattainable through regular divorce negotiations.

The case presented by Aḥmed, son of Süleymān, of the Kürkçübaşı neighborhood near the Cerrāh Meḥmed Pasha mosque, demonstrates the level of control and conviction

⁸¹ DPM 2, 72/15 (1782).

asserted by women to manipulate the outcome of the case to their advantage.⁸² On June 25, 1795, the aforementioned Aḥmed claimed in court that his wife Şâliḥa, daughter of İbrâhîm, continuously denied him intercourse, with the alleged reason that he would take on a second wife. In his testimony, Aḥmed stated that he did not have the intention of marrying another woman. Aḥmed indeed demanded the court to persuade Şâliḥa that he would not take on another woman as wife by taking the oath, “If I am to take on another wife, then let Şâliḥa be divorced from me.” He assigned the court to inform Şâliḥa about his oath and good intentions. This case is not the typical way spouses would have used the court to negotiate such private matters regarding their marriages. When an oath for conditional divorce was uttered, it was usually fulfilled, and the court only recorded it. However, in this suit, the husband made an oath to assure his wife of his intentions and his unwillingness to marry another woman. Şâliḥa’s request was not a stipulation in the marriage contract, instead she used everything in her power as a wife to convince her husband not to marry another woman. It is evident in Şâliḥa’s case that she knew her rights under the law but also that she knew the best way to secure them. Hence, the settlement of this case demonstrates use of the court to restore confidence within marriage and enable its continuity. Although exceptional cases are extant, conditional

⁸² *DPM* 25, 1/4 (1794-95): “Maḥalle-i İslambol’da Cerrâh Mehmed Pasha Câmi‘-i şerîf kurbünde Kürkçübaşı Maḥallesi’nde sâkin Aḥmed bin Süleymân meclis-i şer‘-i şerîf-i enverde zevc-i menkûhası olub zâtî ta‘rîf-i şer‘i ile mu‘arrife olan işbu bâ‘isü’l-vesîka Sâliha bint-i İbrâhîm nâm hâtun mahzarında ikrâr ve takrîr-i kelâm idüb zevcim mezbûre Sâliha Hâtun sen benim üzerime gayrı hâtun tezevvüc idersen diyu benimle mu‘âşeret itmeyüb bana mutâva‘attan imtinâ‘ itmekle ben dahi zevcem mezbûreyi i‘timâd itdirmek için eğer senin üzerine gayrı hâtun tezevvüc idersem ol hâtun benden boş olsun diyu bundan akdem şart ve ta‘lik etmişdim. Hâlâ takrîrim zabt ve tahrîr-i vect olunup zevcem mezbûre Sâliha Hâtun’a i‘tâ olunsun didikde vâki‘-i hâl hıfzan li’l-meâlî bi’t-talep. Fî 7 Zilhicce 1209.”

divorce was typically exercised so a woman could attain what was not easily acquired within the usual course of her marriage.

Another example of a woman resorting to certain tactics to obtain a divorce is the case of Hānīfe, daughter of Meḥmed, of the Veled-i Karabaş neighborhood.⁸³ On June 12, 1784, Hānīfe declared in court that two days prior to this record, her husband, ‘Osman, son of ‘Abdülkerīm, had come to her house, accused her, and cursed her religion and faith. Hānīfe, who was separated from her husband after this incident, demanded her dower of one hundred gurushes along with her maintenance and alimony fees. After the court interrogated ‘Osman and he denied the matter, Hānīfe was asked to produce proof of her account. Hānīfe, who could not provide any evidence supporting her testimony, was advised by the court to continue her marriage.

Divorce at the Initiative of Women (*Hul’*)

Another commonly practiced type of divorce, *hul’/muḥāla’a*, was the dissolution of marriage at the wife’s initiative. In legal terminology, *hul’* implies that a woman liberated herself from the marriage contract by persuading her husband to grant her the right to initiate divorce, for which she was required to renounce her dower and maintenance. *Hul’* divorce was, in fact, an act of negotiation between the two parties.

⁸³ DPM 2, 76/12 (1782).

To end a failing marriage, the husband could either divorce his wife by exercising his unilateral right of repudiation or entitle her to initiate it. *Hul'* was economically the least promising type of divorce for women. Even so, the number of *hul'* cases that appear in the sicils point to its widespread practice during this period (Figures 2.18 to 2.20). The fact that petitioners were required to pay a fee for the *kadi* and other court officials for each dispute makes the extensive registration of both *hul'* and *talāk* settlements even more significant.

Hul' required an offer and its acceptance. Even if there is reason to believe that women could be forced by their husbands to agree to *hul'*, their consent was essential for its realization. A wife initiating the dissolution of the marital bond was obligated to compensate her husband financially.⁸⁴ For instance, *hul'* divorce offered the husband some distinct advantages such as terminating the marriage without having to fulfill the financial obligations required in *talāk*. As the majority of the *hul'* records I examined indicate, the cases contained in the sicils were generally registrations of negotiations settled outside of court rather than records of the actual legal disputes. Since *hul'*'s consequences were economically if not emotionally brutal on women, I observed that women occasionally attempted to manipulate the court in order to obtain a more beneficial outcome after the divorce.

⁸⁴ Jennings mentions that *hul'* settlements without the wife's financial compensation for the divorce initiative could also occur but were definitely rare in *Studies on Ottoman Social History*, 519

The case of Ḥadīce, daughter of ‘Abdullāh, a resident of the Kürkçübaşı neighborhood, gives us a good idea about the pattern of a typical *hul’* record.⁸⁵ On April 30, 1790, Ḥadīce stated her case in the *sharī’a* court of Dāvud Pasha in the presence of her husband, es-Seyyid Ḥasan Agha, son of İbrāhīm. She said: “I am to be divorced from my abovementioned husband, es-Seyyid Ḥasan Agha, by a valid *sharī’a* divorce (*muhāla’a*). I have acquitted my claims to my formerly established postponed dower (*mehr-i mü’eccel*) in the amount of fifty guruhes, my share in his possession of nineteen golden chains that are worth ninety-five guruhes, and a pair of golden earrings that are worth one hundred guruhes, along with the allowance for my official waiting period (*‘iddet*); and I also take upon myself the financial provision of my place of residence. After my previously mentioned husband has given his consent to the abovementioned *hul’*, each of us declare one another free from the obligations of this conjugal union, content in absolving our contracted claims concerning this case.” Ḥadīce’s case was recorded after the ratification of the settlement, and the couple was pronounced divorced. As is common in most divorce cases, we do not have any information regarding Ḥadīce’s motive for the divorce.

In the summer of 1806, ‘Āyşe, daughter of ‘Osmān, made a petition in court claiming that her husband, Aḥmed, son of Ḥüseyin, promised to give her as part of her advance dower, a pair of mattresses, two cushions, five pillows, one duvet cover, two

⁸⁵ DPM 15, 17/3 (1790).

pans, and two pots.⁸⁶ Since Ahmed never supplied those items, ‘Ayşe asked the judge to admonish her husband. The court warned Ahmed to render the goods. Madeline Zilfi argued that deferring the dower could have been used to facilitate the economically destructive effects of *talāk* on women. If a woman could not return to her paternal household after her divorce, she could use the resources offered by her husband at the conclusion of the marriage. However, in a *hul*’ divorce, she agreed to give up her sole source of economic independence. It can be assumed that women who forfeited their dower and followed through with the *hul*’ were either independently wealthy or relied on their families for financial support when they were not remarried.⁸⁷

In her assessment of women through eighteenth-century Rumelia court records, Svetlana Ivanova explained the predominance of *hul*’ settlements in seventeenth- and eighteenth-century sicils by the requirement of court mediation for this type of divorce.⁸⁸ Although based on my research, I concluded that court intervention was not compulsory for *hul*’ during this period. The rise in the number of registrations of *hul*’ cases by women seems to be a phenomenon unique to the periods of 1800-1808 and 1822-1831.⁸⁹

⁸⁶ DPM 47 (1806), 15/7.

⁸⁷ Cem Behar pointed out that when a couple was divorced by *hul*’ and then decided to remarry, they were obliged to settle on a new amount of dower. Hence, the remarrying couple would contract a new marital bond after the three-month waiting period. The second contract, *akd-i sani*, consisted of the conditions listed for their renewed matrimony (*tecdid-i nikāh*), in Cem Behar, “Neighborhood Nuptials,” 547.

⁸⁸ Svetlana Ivanova, “The Divorce Between Zubaida Hatun and Esseid Osman Agha,”: Women in the Eighteenth Century,” 181; Saim Savaş, “Fetva ve Şer’iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılması,” 530.

⁸⁹ In his study of the court’s mediation process and the boundary between what was settled in court and outside of court, Ergene argued, “if amicable settlements were generated outside the court, by private members of the local community, why do they appear in court registers in such high numbers? While it is possible that some

The rationale for women's registrations of *hul'* would be that it was beneficial for them to chronicle this type of divorce to avoid future troubles. A couple's appearance in court was not mandatory for the legitimacy of a divorce case; the main purpose was to establish a written record that would subsequently prevent the husband from making future claims.

Another recurring pattern in the registrations of *hul'* was the indication of women's solidarity and networks. On March 31, 1790, Hādīce, daughter of Aḥmed, from the 'Alī Faḫīh neighborhood in Samatya, petitioned for a *hul'* divorce from her husband, Aḥmed Çelebi.⁹⁰ In her testimony Hādīce said, "I am to be divorced from my husband, Aḥmed Çelebi, by a valid *sharī'a* divorce. I have acquitted my claims to my deferred dower in the amount of fifty-one gurushes and the allowance for my waiting period, and I also take upon myself the financial provision of my dwelling. After my husband gave his consent to the divorce, each of us declared one another free from the obligations of the conjugal union." One day later, on April 1, 1790, another resident of 'Alī Faḫīh, 'Āyşe, daughter of 'Osmān, stated in the Dāvud Pasha court that she was relinquishing her deferred dower of thirty-one gurushes along with her alimony and waiting-period maintenance to divorce her husband, Mehmed Agha.⁹¹ Another similar case was

parties came to court merely to have their previously arranged settlements registered, the presence of large numbers of *sulh* entries in sicils is consistent with the likelihood of court-initiated or -involved mediations" in Boğaç A. Ergene, "Why Did Ümmü Gülsüm Go to Court?", 231. According to this line of argument, there could have been a similar possibility of divorce settlements being court-initiated or -involved mediations, and this could explain the clustering of divorce suits in the sicils that were examined.

⁹⁰ DPM 15, 5/3 (1790).

⁹¹ DPM 15, 5/4 (1790).

registered by Zelīha, daughter of İbrāhīm, again from ‘Alī Faḳīh on April 4, 1790.⁹² She requested the registry of her *hul*‘ divorce from her husband, Muṣṭafā Beşe, son of Velī’ed-dīn, absolving her entitlement to the deferred dower of fifteen gurushes. As in the cases of Ḥadīce and ‘Āyşe Hātūn, the court accepted Zelīha’s plea, recording her divorce in April of 1790. These *hul*‘ documents of three women from the same neighborhood provide reason to argue that there was significant room for “gendered” intra-communal networking.

The above cases indicate that all three women lived in the same neighborhood of ‘Alī Faḳīh and registered their divorces within days of each other. The similarity of the three divorce cases and their registration within days of each other demonstrate the possibility of a network that allowed them to share private matters and information. It is possibly through this network that these women came to address their marital strife and became acquainted with the court’s procedural structure. These cases are also significant because they represent the negotiations women used to release themselves from their marriages. We can ascertain from the evidence that these were all Muslim-born women married to men of modest means—determined from their comparably small amount of dower—and most importantly, all three presented themselves in court without the need of a formal deputy.

The existence of a network among women illustrates that they shared common problems, and created a space for discussing these issues with each other. More importantly, although they had to take action separately regarding their individual

⁹² *DPM* 15, 5/5 (1790).

divorces, they were in fact acting collectively since they had a common aim regarding a private matter. This collective activity seems to indicate that women who belonged to a similar economic stratum in the same neighborhood could create opportunities to meet each other either in public or in private, consulting, informing, and advising one another to resolve a common problem. Hence, this possibility suggests that women were not necessarily confined to the household, and, if they were, they found other means to socialize with each other to share their troubles. The incident reported by Şem‘dānī-zāde reveals other ways in which women used their networks to strengthen their requests and attain their goals. He wrote:

“In April and May of 1757 (H.1171), due to the shortage of bread in Istanbul, the people were keen on rice, were buying it in excessive amounts, more than their need. Fearing that there would seemingly be a scarcity of rice, especially with the approaching of Ramazān, a new prescript was legislated so that Muslims would not suffer any trouble obtaining it. The prescript ordered the distribution of two *vaḳıyyes* of rice for each, with the intention that no one would be deprived of it. However, on the last day of April, a few hundred impudent womenfolk gathered near the storehouse of a *zimmī* rice merchant in Gümrük-önü. The *zimmī* took flight when one of the women pulled out a *yataghan* knife on him. The women ransacked the rice that was in the store. Upon hearing of this incident, the Agha of the Janissaries, Ba’lband Mehmed Pasha, came intending to restrain them. Far from being able to interdict the women, they reviled him and humiliated him. The Agha sent Kara-Ḳulağı Ḳuzucu Mehmed Agha to see the grand vizier. The aforementioned Ḳuzucu related to me about his encounter with the grand vizier, “when I hastened to the *sahibi devlet* and recounted the incident, I found him in the midst of amusing himself with *saz*. He, not once turning even a hair, ordered me to fetch and summon the *Ḳul-Kethüdā* to the scene of the incident. When I brought the *Ḳul-Kethüdā* to the locale, the womenfolk saw him and they scattered. After this outrage, the grand vizier found it unsuitable for the agha to remain in his position. The agha was removed from service, and the *Ḳul-*

Kethüdā, the loyal servant, Mehmed Agha, was appointed as the agha of the Janissaries the following day.”⁹³

The author’s narrative portrays women in control and in a frenzy, especially when they gathered together for a common cause. Their united power gives them the strength to even rebut such an authoritative military figure as the *agha* of the Janissaries. Şem‘dānī-zāde is perplexed by the audacity of these women, who seem to be quite comfortable using knives and reviling—characteristics generally attributed to disreputable men.

In an account regarding sartorial restrictions and the prohibition of women to wear a certain kind of mantle, Şem‘dānī-zāde comments that ever since the time of İbrāhīm Pasha, women wore dresses that were lascivious, and whenever they were prohibited from wearing them, they said, “There is no punishment for womenfolk!” Women did not comply with the new regulations introduced by the edicts. Instead, they only followed them for not more than three days, overlooked them by wearing extravagant mantles, strolled freely in the bazaars with their sinful manners, and caused the increase of prices of these garments. Şem‘dānī-zāde says, “However, it has not been more than six months of this reiteration, and strangely enough, nothing has changed. Each year at least two edicts are issued concerning the unemployed of Anatolia, and the womenfolk of Istanbul, with regard to the reiteration of their removal, yet they cannot be annihilated. It is for this reason that Anatolia and Istanbul have become ruined. Whatever this is!...”⁹⁴

⁹³ “pirinç yağması”, *Mür’i’t-tevârih*, IIA, 16.

⁹⁴ Ibid, 36.

In a large number of the divorce cases it was impossible to determine from their formulaic language whether the couples co-habited or lived in separate houses. This particular question was generated by a small number of divorce cases that took place due to spouses' separate living arrangements. The estate inventories also indicated that a few spouses had separate living arrangements, possibly due to husbands' occupations and appointments to other towns. That said, I considered those cases without information on the couples' living arrangements to denote their cohabitation. Consequently, it is possible to argue that in the period I examined, the majority of the married couples were living together in the same household. The case of Hüseyn Beşe, son of 'Alī, illustrates how living in divided households possibly prompted the separation of spouses.⁹⁵ Hüseyn Beşe's case was, in fact, brought to court to register the transfer of witnesses, however, the details concerning ending a marriage due to the spouses' separate living arrangement were outlined throughout the record.

On November 12, 1783, Mollā 'Alī, son of Hālī son of 'Abdullāh, and 'Ali Agha, son of Meḥmed son of 'Abdulrahmān and others⁹⁶, the original witnesses (*ṣāhid'ül-āṣl*) to

⁹⁵ DPM, 42/7 2 (1782).

⁹⁶ The term designating "others" was phrased as "ghayruhum" in the record. Hülya Taş, who studied the role and position of witnesses in the sharī'a court, has interpreted a longer version of this term "ve gayruhum mine'l-hāzırın" to indicate the presence of an exceeding number of witnesses. In this regard, Taş argued that these individuals could have been present in the hearing of the case while waiting for their turn in court for the settlement of the next case by the kadi: Hülya Taş, "Osmanlı Kadı Mahkemesindeki "Şühûdül-Hâl" Nasıl Değerlendirilebilir?" 31-33. Taş has criticized Boğaç Ergene's interpretation that the recurrence of the names of certain witnesses in a specific court might indicate their positions as "official/expert court witnesses", arguing that this was a result of misreading the function of these individuals in court. Taş has suggested that these individuals acted as a special expedition unit rather than as the designated witnesses in court. While Taş's argument might apply to most cases in the records, it has been verified that certain individuals of good repute and background became part of a local court's culture,

the divorce settlement of Es-Seyyid Hüseyn Beşe, son of ‘Alī, presented their conferral of their positions as witnesses in the Dāvud Pasha court. It was mentioned in the record that the subject of the case, Es-Seyyid Hüseyn Beşe, from Bursa, was temporarily staying as a guest in a coffee shop located in Gümrük-ü Kebîr neighborhood. Mollâ ‘Alī and ‘Ali Agha attested that they were witnesses to Hüseyn Beşe’s repudiation of his wife, Faṭma, who resided in Bursa. The aforementioned witnesses further stated that the registration of the divorce had taken place in Bursa one day after the repudiation by Hüseyn Beşe of his wife on September 27, 1782. Given that the actual incident had taken place in Bursa, these two witnesses, among others whose names were not mentioned, could not have been able to travel the distance to personally witness the divorce.⁹⁷ Instead, they had designated four Muslim males to be proxy witnesses (*şāhid’ül-fer’i*) and were registering this transfer of responsibility in court.⁹⁸ Suitably, each of the two original witnesses entrusted two witnesses, adding up to four *fer’i* witnesses, namely: es-Seyyid Hālīl, son of eş-Şeyh Hasan, el-Hāc Ahmed, son of Murād,

functioning as witnesses though they never acquired such an official status as suggested by the critique of Ergene’s work by Taş. Ergene and Canbakal, have both dealt with the question of the identity of witnesses in court, and each found local particularities regarding their function and presence in this sphere, see Ergene, *Local Court, Provincial Society*, 28-29; and Canbakal, *Society and Politics in an Ottoman Town*, 125-140.

⁹⁷ According to Bilmen, the term “mesāfe-yi sefer” generally referred to a commuting distance requiring longer than eighteen hours. Since the witnesses in court were not required to commute to locations that would entail an overnight stay, the journey between the Istanbul and Bursa courts was classified as a distance that would necessitate the witnesses’ longer commitment: Bilmen, *Hukuku İslamiyye* VIII, 148-149.

⁹⁸ The conferral of the position of witnesses was a seriously treated matter in sharī‘a law. In Ottoman practice, original witnesses were bound to state their reasonable excuses for being unable to carry out the task of testifying in court. If the court found the excuses they provided to be rational, the original witnesses were to produce new witnesses, Ibid, 149-150.

and es-Seyyid ‘Alī, son of İbrāhīm, and el-Hāc Muşţafā, son of Yusūf. They attested that the recording of the divorce of Hüseyn Beşe had taken place one year earlier, on September 27, 1782.⁹⁹

The divorce of Hüseyn Beşe and Faṭma had taken place in Bursa in September of 1782, exactly a year before the registration of this case in the court of Dāvud Pasha in Istanbul. Hüseyn Beşe had repudiated his wife, Faṭma, a resident of Cevirzāde neighborhood in Bursa, with an irrevocable divorce. Their divorce had been finalized by Faṭma abdicating her entitlement to the dower in the amount of one hundred gushes along with her waiting period and alimony maintenance. The four witnesses mentioned above attested to Faṭma’s relinquishing her lawful claim to the dower along with other economic benefits that came with an irrevocable *ṭalāḳ*. It is not clearly evident from this court record whether the couple was living in separate cities at the time of the divorce, although Hüseyn Beşe appears to have been present in Bursa during the recording of the case. Now that Hüseyn Beşe was living in Istanbul, although this might have been a temporary situation, he was present for the recording of the second case in the Dāvud Pasha court. It is highly likely that the reason for the *ṭalāḳ* of this couple could be the departure of Hüseyn Beşe from Bursa. The fact that his former wife had relinquished her right to the maintenance and dower is interesting given that their divorce was not a *ḥul’*.

⁹⁹ The rule governing transfer of witnesses, required that four witnesses be appointed substitutes for the duty of two original witnesses, Ibid, 151; Molla ‘Alī and ‘Alī Agha stated in their testimony that these four substitute witnesses were obliged to be present in court in Bursa, to hear the recording and attest to the truth of the matter in question. The practice of conferral of the witness position to one another was also referred to in the record as “‘ale’l-ṣhāde”; for a brief discussion on the subject see Bayındır, *İslām Muhakeme Hukuku*, 199-205. For more information on this procedure in the specific case, see *DPM* 2, 42/7 (1782).

The fact that Hüseyn Beşe felt it necessary to record her abdication of the property a year after the incidence took place in Bursa might be due to Faṭma's denial of her agreement to such a settlement. Hence, it is possible that she might have arrived in Istanbul, or sent proxies to her former husband, to demand what was rightfully hers. Hüseyn Beşe probably would not have gone to the trouble of renewing his witnesses and registering an attestation of his divorce, which had already been recorded in another court, if Faṭma had not pressured him in some way.

A similar case of a couple being affected negatively by not sharing a household was brought to the Dāvud Pasha court by a certain İbrāhīm Beşe, son of İbrāhīm, a resident of the Mi'mār 'Āşım neighborhood.¹⁰⁰ In his testimony, İbrāhīm Beşe stated that his wife, Nefise, daughter of 'Abdullāh, was consistently living in a different house that he had provided for her. İbrāhīm Beşe demanded that the court notify Nefise to treat him as her husband in that house. It is interesting that İbrāhīm Beşe did not ask the court to advise Nefise to move into the house he lived in. The reason for this could be that the claimant had another wife and the two wives refused to share a household. The record points to Nefise's neglect of her wifely duties toward her husband. Perhaps Nefise was using the authority in her power as the [first?] wife by refusing to pursue her duties toward İbrāhīm Beşe because he had another wife.¹⁰¹

¹⁰⁰ *DPM* 2, 74/10 (1782).

¹⁰¹ Cases in which the husband and wife were living in separate houses were definitely rare in the court records. Another such case was the dispute presented in court by a certain müezzın Molla Hasan, who stated he had provided his wife Zeyneb, daughter of Aḥmed, a separate house in which she lived alone. Molla Hasan was demanding that the court warn his wife, Zeyneb, to not refuse him her wifely duties, in *İBM* 209, 37/7 (1755-57).

Even if the option of initiating divorce provided women with the opportunity to handle their own lives, the consequences of the *hul'* settlement were both economically and emotionally disconcerting. The fact that a wife had to give up her right to her dower and allowance in addition to undertaking the financial responsibility of the household and her children was simply daunting. It is through the language of the court records regarding the *hul'* and *talāk* that we hear the voices of these women. In a divorce case, we are given information such as the location of the couple's neighborhood, the husband's name and profession (titular), whether either of the parties were represented by a deputy, when the act of divorce took place, and the amount of the deferred dower. Hence, in mapping the places of habitation, we can assess 1) the role of a specific courthouse—in this case the Dāvud Pasha—in the lives of the litigants, 2) their income level according to their neighborhood or district, and, 3) their agency and legal strategies given the distance they travelled to access the court. In late-eighteenth-century Istanbul proper, women of various socio-economic and religious backgrounds become more visible through their legal manifestations.

The Annulment of Marriage (*Tefrīk*)

The final category, *tefrīk*, was an annulment granted for reasons such as apostasy, abuse and ill-treatment, desertion, impotence, and sexual abstention. In theory, women had the right to petition for *tefrīk*, and the man was obliged to grant annulment when the

claimant brought to court proof that the marriage was defective or harmful. Nevertheless, the scarcity of marriage annulments in the late-eighteenth-century records could be due to the *hanafī* jurists' discouragement of this type of separation: *tefrīk* indicated a flexible manner of separation for the male, while *tefrīk* offered a more egalitarian form of divorce for the female. Knowing that they might never obtain an annulment in a hurtful situation, some women were keen on adding certain stipulations to their marriage contracts.¹⁰²

The fetva recorded in the *Behçet'ül-fetāvā* demonstrates the initiative on behalf of women regarding annulment and the strict approach by the jurists to the issue of *tefrīk*¹⁰³:

Question: A woman claimed in court that her husband had previously made a conditional statement that if he were to drink wine then she should be divorced from him with an irrevocable *talāk*. She stated that her husband drank wine so she was irrevocably divorced. Her husband denied the woman's statement. If the witnesses to the woman's testimony had not actually seen the man drink, but still claimed that they saw him in a drunken state, would the woman's allegations be solid? Would these allegations constitute grounds for her *tefrīk* from him?

Answer: No, it would not.

This situation, presented to the jurists by the woman, may appear to be a simple form of conditional divorce, in other words, divorce by oath. However, the fact that the husband denied the allegations, along with the evidence brought forth by the witnesses

¹⁰² Aydın has also pointed to the use of conditional divorce as a form of separation in court. According to his examples from the sicils of eighteenth-century Eyüp, since *tefrīk* was commonly not allowed by hanafī discourse, spouses often resorted to conditional divorce, Mehmet Akif Aydın, "Eyüp Şeriye Sicillerinden 184, 185, ve 188 No'lu Defterlerin Hukuki Tahlili," 18. Yüzyıl Kadı Sicilleri Işığında Eyüp'te Sosyal Yaşam, 69-70.

¹⁰³ Yeñişehirli, *Behçetü'l-Fetāvā*, 94.

mentioned in the fetva above, reveal that the situation was more complicated. It is evident from the question part of the fetva that the wife was not striving for an irrevocable *ṭalāk*. Instead, she wished to be divorced from her husband by *tefrīk*. The wife's provision of witnesses as evidence to the non-fulfillment of her husband's promises was not found to be effective since the witnesses had only testified to seeing him in a drunken state but not to actually seeing him perform the act of drinking. This loophole in the question made it possible for the jurist to state the option of divorce by *tefrīk*. Although annulment would be granted on the grounds of impotence, venereal disease, or lack of economic support due to extended absence of the husband, the fetva above reveals that non-fulfillment of promises could also be a cause of *tefrīk*. The sharī'a made the generalization that if a marriage was proven to be defective due to a spouse's lack of fulfilling their duties, the other spouse could petition for an annulment.¹⁰⁴

Tefrīk usually served to end a defective marriage by the initiative of the complaining spouse. There were also instances when a third person could ask for the *tefrīk* to become effective among a couple. A fetva regarding the consecutive or even

¹⁰⁴ "The taking of such an oath was not, in itself, a problem. The muftis were often asked about this type of divorce, one in which a husband might swear (*halafa*) or make conditional (*'allaqa*) a divorce as part of his promise to deliver on certain marital obligations, most commonly the provision of *naḥaḥa*. He might take such an oath before departing on a journey, or swear to remedy a present deficiency, such as inadequate housing, within a certain period of time. This type of conditional divorce was thus another road to what was in effect a *faskh*, or annulment for reasons of non-fulfillment of marital obligations. Rather than resorting to a Shafi'i or Hanbali judge, however, to annul a marriage in which the husband was not providing, some women managed to have their husbands swear a special oath to support them properly or divorce them. Should that support not be forthcoming, the divorce would be automatic and require no adjudication," Tucker, *In the House of Law*, 103-104.

double marriage of a woman to two men gives further information concerning the issue¹⁰⁵:

Question: A man who testified in court that a woman, who is now married to another man, had previously married him while witnesses were present. The woman denied the allegation that she was already married at the time of her second marriage. If the man established the truth to his allegations in the presence of the second husband in court, would he be able to annul the woman's marriage with the other man by *tefrīk*? *Answer:* Yes, he would.

Question: Under these circumstances, would it be necessary for her to have a waiting period (*'idda*) if she had already consummated the marriage with the other man without him knowing that she was married? *Answer:* Yes, it would.

Yeñişehirli 'Abdullāh explains in the fetva that the uninformed second husband was free from the obligation of paying the woman her waiting period maintenance. Given that the codification of the family and marriage was attempted by the state only after the composition of the *hukuk-u aile kararnāmesi* (Ottoman Law of Family Rights) of 1917¹⁰⁶, it is not surprising that a woman would have the courage to remarry without being officially divorced from her prior husband. Such an incident would perhaps have been triggered by the previous husband's departure to another location without leaving her an income to live on. In Ottoman-Hanafī practice, the restrictions that were applied to *tefrīk* made it more difficult for women to end their marriages for such detrimental

¹⁰⁵ Yeñişehirli, *Behçetü'l-Fetavā*, 106.

¹⁰⁶ İlber Ortaylı, "Ottoman Family Law and the State in the Nineteenth Century," *Studies on Ottoman Transformation, Analecta Isisiana* X (Istanbul: Isis Press, 1994), 321-332.

reasons as desertion, irreconcilable differences, or abuse by their husbands. Aydın, in his study of petitions by women to the sultan and the imperial council (*divān-ı hümayūn*), explains that most annulment cases regarding ill-treatment and irreconcilable differences were evaluated and adjudicated as *hul'*.¹⁰⁷

The hanafī approach to the issue of desertion was also tremendously severe regarding women. If a man left his wife for war or was travelling for trade, his indefinite absence was not considered to be viable grounds for the *tefrīk* of his wife. At the disappearance of a husband (*gā'ib*), a woman would usually be left without any maintenance. The financial hardship of this situation was resolved only if the husband had appointed a proxy (*vekīl*) to divorce her and take care of her maintenance in case he did not return. According to this discourse, if a deserted woman was unable to produce proof of her husband's death, she was not allowed to be formally separated from him for approximately ninety to 120 years, or until his peers passed away. This restriction caused a myriad of difficulties in women's lives given that they lost a major source of income for the upkeep of their families and households upon desertion by their husbands. The only way for a woman to circumvent the harshness of this ambiguous state was to provide proof that she received reliable notice of her husband's death, in order to remarry another man. The fact that a husband usually would not grant his wife the right to initiate divorce

¹⁰⁷ Aydın presents a document regarding the issue, dated 1215 (1800). The document states that a certain Sheikh Süleymān brought his grievance to the sultan about his daughter, Mesude, and son-in-law, Ḥasan, explaining that the couple could no longer maintain a good relationship (*hüsn-ü muaşeret*). The father demanded that Mesude and Ḥasan's marriage be annulled by *tefrīk*. The matter was referred to the kazasker of Rumelia and it was resolved in the format of *hul'* upon obtaining Ḥasan's consent. BOA, HH, 15587 in *İslam-Osmanlı Aile Hukuku*, 117.

prior to his departure would make matters even worse, since she would be left without any maintenance or the option to remarry.

The case of Emīne, daughter of Yusūf, regarding her missing husband, Ḥasan Agha ibn-i ‘Abdullāh, who was of the *zu ‘emā*¹⁰⁸ rank and renowned as an apprentice to Yeğen Pasha, is significant since Emīne managed to obtain permission to obtain her *naḥaḥa* from the court despite her husband’s abandonment.¹⁰⁹ According to Emīne’s testimony, Ḥasan Agha left for *Zağra-yı Cedīd*¹¹⁰ in Rumelia and failed to send any maintenance dues for an entire year for the upkeep of her family and household. Emīne demanded that the court acknowledge the absence of her husband, and provide her the daily amount of ten paras towards her *naḥaḥa*. The court decided in favor of Emīne, without requiring the testimony of witnesses. The case is a rare one since it was often difficult for deserted women to obtain any maintenance fees without testimony from appropriate witnesses.

In order to redress the grievances of deserted women, the *hanafī* judges appointed *shafī ‘i* regents (*nā ‘ib*) to handle annulments of these marriages. The *shafī ‘i* school was more accommodating toward women on the issue of *tefrīk* allowing them to obtain

¹⁰⁸ The word is the plural of *za ‘īm*, which designates someone who was a fief-holder of 20,000 to 100,000 aspers of yearly value; for each 3,000 of which the possessor was held to take a man-at-arms to the wars, when called out, *Redhouse Lexicon*.

¹⁰⁹ AÇM 206, 64/3 (1756-57).

¹¹⁰ Present day Bulgaria.

divorces when their husbands went missing for a certain amount of time.¹¹¹ A popular solution until the mid-sixteenth century, this use of the *shafi'i* judges was strictly prohibited by a 1537 imperial edict.¹¹² The prohibition imposed by the edict was the result of significant complications that occurred after a *tefrîk*. For the hanafî judges, it was extremely difficult to handle such problematic situations as when a husband returned to find his wife married to another man. The 1537 edict specified that women manipulated the *shafi'i* regents with the excuse of being left without a *naḫaḫa* in order to remarry in the absence of their husbands. This view was indicative of the legal system's skeptical approach toward women. Although factual evidence reveals that the use of *shafi'i* rulings might have made matters more complicated, they enabled women to liberate themselves from the ambiguous states in which they had been left. The case of Zeliha from the Samatya district is an example of how deserted women fought for justice in court.

¹¹¹ The anticipated period was generally four years according to the *shafi'i* school. However, if a woman was able to present witnesses or another form of proof regarding the death of her husband, she could obtain the divorce immediately. See Bilmen, *Hukuku İslamiyye*, 7, 273.

¹¹² Ahmet Akgündüz, *Osmanlı Kanunnâmeleri* VI, 368. For two fetvas by the sixteenth-century chief jurisconsult Ebussu'ud Efendi regarding the prohibition of applying to a *Shafi'i* regent see Mehmet Ertuğrul Düздаğ, *Şeyhülislâm Ebussu'ud Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (İstanbul: Enderun Kitabevi, 1983), 44 and 138:

“*Mes'ele*: Zevci nâbedîd olan Hind, naḫaḫa ya aczi olucak teşeffu' edip, şafi'î kâdîsı tefrik edip zevc-i âhara varsa, ba'dehu Zeyd gelse zevcesin geri alabilir mi? *El-cevap*: Alamaz. *Cevâb-ı âhar*: Teşeffu' husûsu Diyâr-ı Rûmda câri olmaya deyu men'-i sultânî vâki' olmuştur.—Ebussu'ûd.” Trans.: “*Question*: Hind, whose husband, Zeyd, is not in view, goes to the *shafi'i* regent in order to acquire a maintenance and obtains a *tefrîk* divorce. If Zeyd returns after a while, would it be possible for him to regain her? *Response*: No, it would not. *Other Response*: There has been a sultanic mandate prohibiting the use of *shafi'i* regents in Istanbul.—Ebussu'ûd.”

Zelīha, daughter of ‘Alī, after reporting to the court regarding divorce, brought in her witnesses who swore they were present when Kutucu ‘Ömer Beşe divorced her with an irrevocable *talāk*. It is apparent from this document that Zelīha was knowledgeable about the proceedings of cases similar to hers in court, and she had made the necessary preparations to settle her case. As a requirement for the settlement of desertion cases, Zelīha had provided three Muslim witnesses who would confirm her statement that her husband had left her without maintenance and that he was not coming back. Molla Süleymān, Faṭma, daughter of ‘Alī, and ‘Āyşe, daughter of İbrāhīm, attested in court to Zelīha’s claim, stating, “On the tenth day of October, 1790, the aforementioned Kutucu ‘Ömer Beşe divorced Zelīha Hātūn with an irrevocable divorce in our presence, we are witnesses to this divorce. And ‘Ömer Beşe has been missing since that date.”¹¹³

Although there is no information regarding the *kadi*’s final verdict, this case is indicative of women’s knowledge of the law and their legal rights and is a clear illustration of my argument regarding women’s interest in seeking legal justification to procure favorable verdicts.

The act of leaving one’s wife and family could also point to a form of escape from one’s strained circumstances and basic responsibilities. The only solution that the Ottoman-*hanafī* discourse provided for abandoned women was for them to borrow daily maintenance fees from a person in lieu of their husbands. However, this was not an effective method given that even the *vekīls* appointed by husbands prior to their

¹¹³ DPM 15, 52/2 (1789).

departures would abstain from paying the maintenance since it was not known whether they would ever receive repayment of the borrowed sum. When a woman stated in court that she was left by her husband without any means, the court would decide on a *nafaka* and permit her to borrow funds in the assigned amount, and the debt would become her absent husband's obligation. In this regard, a wife had a definite right to claim her husband's possessions for the reinstatement of her *nafaka*. The case of Hādīce, daughter of Hasan, illustrates how women brought such matters to court.¹¹⁴ Hādīce, who was a resident of the İskender Agha neighborhood, claimed in court that her husband, el-Hāc Ahmed, left for a distant town without supplying her maintenance. There was no mention of divorce having taken place among the pair. The judge assigned Hādīce six *paras*¹¹⁵ per day for her maintenance, authorizing her to borrow the sum. The amount would be registered as her husband's debt to the treasury. Hence, the court abstained from granting her separation from her husband and resolved the immediate problem of her maintenance by assigning her a certain amount to live on, which she would borrow in her husband's name. This was in no way a long-term solution to Hādīce's situation, however, it allowed more time for her husband's assumed return to her.

In the records, there is evidence that women were not the sole claimants for separation when a marriage was proven to be defective. Men also chose to register divorce when they desired to emphasize the mischief caused by their wives. The case

¹¹⁴ DPM 2, 41/2 (1782).

¹¹⁵ A coin in the equivalent value of one-fortieth of a piaster (akça).

presented in court by Süleymān, son of ‘Osmān, is distinctive given that he did not mention alimony in his testimony and resolved instead to register the dispute in order to have legal protection for himself and his son.¹¹⁶ In his statement against Salomon veled-i Sabetay, a man of Jewish origin, Süleymān demanded that the court enforce Salomon to provide a guarantee (*kefīl*) that he would do no further harm to his family. According to Süleymān’s account, Salomon had tricked and despoiled his wife, Faṭma, by falsely stating that her brother had come to the city and that he would take her to her brother. After finding out about this incident and convinced that Faṭma was no longer pure, Süleymān divorced her with a *ṭalāk-ı bāin*. Süleymān further stated that he was now afraid that Salomon would assault and harm his little son, who was in the care of Faṭma after their divorce. Süleymān requested that the court obtain a guarantor to pledge that Salomon would not harm his son in the future. The court did not find Süleymān’s plea to be legitimate and, therefore, dismissed the case. The fact that the court did not instruct Faṭma to provide any witnesses to defend herself against her husband’s allegations seems to demonstrate the forbearance with which the kadi treated Süleymān’s accusations.

Süleymān’s take on the incident is intriguing for several reasons. First, he demanded that the court coerce Salomon to provide witnesses to his innocence rather than asking that his wife be similarly coerced. Second, he contradicted himself by stating that his wife was tricked and assaulted by Salomon and then took action as if Faṭma was not the one who was tricked, insinuating in his statement that she had willingly complied to

¹¹⁶ *İBM* 209, 10/10 (1755-57).

Salomon. Finally, he immediately divorced her without an apparent attempt to save their marriage, believing that although Faṭma may have been innocent, she was no longer good enough for him having publicly lost her virtue and dignity as a woman. Süleymān's registry of this situation, which could be interpreted as having many ambiguous aspects, was a strategic attempt to publicly denounce the parties who brought disgrace to his name. The litigant's action was also an effort to obtain the legal custody of his young son, who would generally remain under the custody of his mother given his age. Even if the formulation of the case does not reveal whether Salomon actually tricked Faṭma or if Faṭma had a consensual extra-marital relationship with him, it discloses Süleymān's perception and reaction to the situation. Not surprisingly, the idea of his wife being corrupted by another man, who was a non-Muslim, was an inadmissible offense to Süleymān. His fear that his son might also be harmed by Salomon reveals his anxiety that Faṭma and Salomon would continue seeing each other. Since the son resided with Faṭma after the divorce, Süleymān did not want him to be exposed to such an inappropriate relationship. The case, however, was treated as a settlement of custody rather than a dispute of adultery (*zinā*).¹¹⁷

¹¹⁷ Had this case been presented in court as a suit of adultery, the consequences would have been much more severe for both Faṭma and Salomon. The late-seventeenth-century chronicle by Defterdār Sarı Mehmed Pasha includes an anecdote about a married Muslim woman being stoned to death (*recm*) for the allegation of committing adultery with a Jewish male. According to Mehmed Pasha's narrative about the incident, the woman was the wife of Ḥaffāf 'Abdullāh Çelebi (a shoemaker), who was a resident of Akşarāy. Two Muslim witnesses had sworn that they had found her having intercourse with a Jew, who owned a gazzāz (silk maker) shop not far from her husband's shop. Although both the woman and the Jew had denied the allegations, the Kazasker of Rumelia, Beyāzī-zāde Efendi, had taken the word of the two witnesses to be correct and ordered their execution by issuing a fetvā. The details of the severe punishment was given in detail by Mehmed Pasha, who stated that the woman was buried up to her arms in a hole that was dug in front of the Sultan Ahmed mosque in At Meydānı, where she was stoned to death amidst the assembled crowd of all ages. The Jew had converted to Islam one day before their death sentence hoping

This chapter has assessed the different divorce patterns extant in late-eighteenth- and early-nineteenth-century Istanbul. In my quantitative analysis of the records of three courts namely, the Dāvud Pasha, Ahī Çelebi, and İstanbul Bāb courts, I have illustrated an increase in the registration of divorce and nafaqa cases during times of economic and political strife. The only practiced categories of divorce were *talāk* and *hul'*, and they were predominantly registered by women. Of the three categories of divorce discussed in this chapter, *tefrīk* was not practiced during this era. Through my analysis of the sampling of ledgers between the years 1782 and 1840, the Dāvud Pasha court seemed to specialize in marital and family related suits. When the records of the three courts were compared, the court with the highest number of divorce registrations as well as individuals with the lowest amount of wealth was Dāvud Pasha. Hence, given this data, it could be argued that marriages of those with lower economic means more frequently ended in divorce.

to avoid the punishment. However, he was also killed in the same location that day. Mehmed Pasha mentioned that the sultan had also arrived at the palace of the minister Fazlī Pasha to watch this unfortunate event that resembled the “grievous Kerbelā incident.” Hence, the punishment of the Muslim woman and the Jewish man who allegedly committed adultery was due to the report by two male witnesses who claimed to have seen them during the act: Defterdar Sarı Mehmed Paşa, *Zübde-yi Vekayiāt*, 114-115. The fact that there had not been an attempt by the court to assess the reality of the allegations by Süleymān, makes this case an ambiguously strategic attempt that targeted something other than claiming Faṭma to be an adulteress. I would like to thank my colleague, A. Hilal Uğurlu, for bringing this anecdote to my attention. There are several other examples regarding the punishment of adultery as a hadd crime, see Nejat Göyünç, “Osmanlı Ceza Hukukuna Ait Belgeler,” *BTTD* 3 (1967): 40-42. Ortaylı’s account of an incident regarding the adulteress wife of an imam demonstrates the general action taken to punish those who committed such crimes in the late-sixteenth century: “Mehmed, who was an imam in a mescid in Istanbul was praying in the mescid. While he was gone, a certain Hızır had relations with the imam’s wife and was found with her inside the house. Hızır was punished with shovel-beating till death, and the woman was imprisoned for life (11 Ramazān 997/1589 A.D.),” in *BOA*, Kepeci Tasnifi no. 252/2, see İlber Ortaylı, “Anadolu’da 16. Yüzyılda Evlilik İlişkileri Üzerine Bazı Gözlemler,” 38; for a detailed analysis of adultery and punishment of the act see the unpublished dissertation of Başak Tuğ, “Politics of Honor”.

CHAPTER THREE

The Deferred Dower and Allowance as Patterns of Property Allocation in Marriage

As indicated in the previous chapter, the role of property was a determining factor in the making and breaking of the marital bond. Ottoman society in Istanbul deemed the compatibility of the husband and wife to be the basis of marital harmony. An ideal eligible bachelor was represented as free (not enslaved), a pious Muslim, and employed in a respectable occupation. But most importantly, he was expected to be of comparable social status with the bride-to-be to be considered her *kufuww*¹, her suitable peer in marriage. Although all of the above attributes contributed to the appropriateness of a man's candidacy for marriage, the economic compatibility of the pair was probably the determining factor in the final decision. A man was expected to be able to provide for both the dower and the allowance of his wife for as long as they were married. While a man's incapacity to fulfill these requirements disqualified him from being any woman's peer, one who could provide the negotiated dower and allowance to maintain the marriage in a way commensurable to the bride's status was rendered compatible to a woman having greater wealth than his.

This chapter examines the transfer of materials of financial value—including money and immovable property—between the nuptial couple in exchange for, or freedom from, certain rights and responsibilities. Detailed definitions of the specific terminology used to discuss property and marriage—namely dower and allowance—will be provided

¹ Bilmen, II, 67-69.

to inform the broader discussion of why individuals desired marriage, and possibly remarriage, during late-eighteenth- and early-nineteenth-century Istanbul. My intention in studying the property allocation patterns in this section is twofold. First, I address active negotiation strategies by the conjugal pair regarding their shared and independent possessions to process how those strategies affected the marital union. Second, I examine the public statement and notarial registration of the outcome of these strategies in court to assess what a particular property represented for the parties involved. This twofold approach will permit the strengthening of my broader argument vis-à-vis the invoking of a formalization of marriage especially by women's registry of personal status cases in court.

Because disputing parties actively used the court to settle and notarize their negotiations, the litigants' personal issues became public knowledge. In the records of the three courts, İstanbul Bāb, Aḥī Çelebi, and Dāvud Pasha, women frequently appeared as claimants without being represented by a proxy. My comparative analysis of the percentage of women attending these courts as litigants revealed that the Dāvud Pasha court was used for matrimonial suits significantly more often than the other two. The important distinguishing factor for this fact was the economic status of the women who used the Dāvud Pasha court. In Figure 3.1, this distinguishing factor among the profiles of court attendees is observable through an assessment of the amount of dowers included in the sicils.

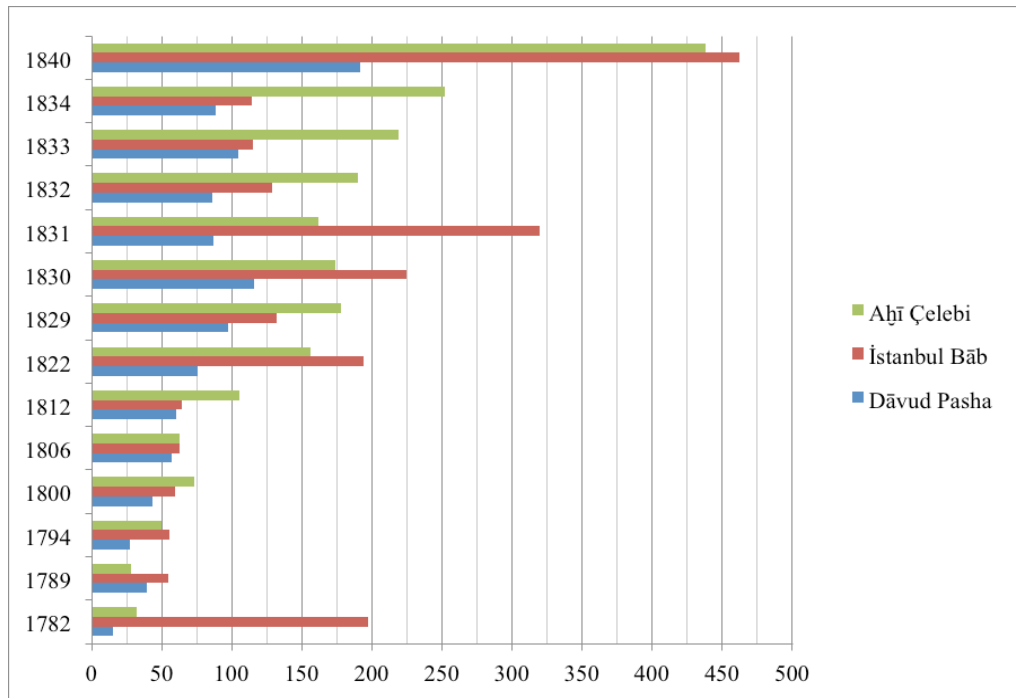


Figure 3.1 Average Dower Values in Gurushes Recorded in Divorce Suits in the İstanbul Bāb, Ahī Çelebi and Dāvud Pasha Courts

As the graph illustrates, the lowest percentage of dower values were registered in the Dāvud Pasha court followed by the Ahī Çelebi and İstanbul Bāb courts. Hence, it appears that the plaintiffs who attended the Dāvud Pasha court had relatively lower financial means. Given that the regent of the kadi of Istanbul presided over the İstanbul Bāb court, it is reasonable that more people attended this court. Accordingly, it is plausible that the İstanbul Bāb court contained larger dower amounts than the two other courts.

One recurring aspect in the ledgers regarded the location where the court was held. Given that a kadi's jurisdiction was not confined to the district of his rule he customarily held the proceedings in a designated space that functioned as courtroom, which could also be a section of his house. Although the customary practice was for the litigants to present their cases in the actual location of the court, the kadi or his regent was allowed to hold court where he saw fit. For instance, there are several cases noted in the ledgers when the kadi was summoned to the house of the litigants. This illustrates that the kadi could go to the claimants' residence, notarize a settlement, or give a verdict in the privacy of their household. Suraiya Faruqi observed—based on her own assessment of eighteenth-century Bursa registers and Judith Tucker's analysis of nineteenth-century Cairene women—that the conjugal pair was considered within the framework of the 'companionate' family.² The acquisition of shared material interests by spouses was reflected in court through their concern for each other's wellbeing. Faruqi explained that elite women and men seldom appeared in court: in Cairo a legal representative was sent to the court, and in Bursa a kadi's regent would be directed to the family's house, mainly to encounter the female participants in the case. In my study of late-eighteenth- and early-nineteenth-century Istanbul, a similar pattern to Bursa was discernible in the use of court by urban notables and their privileged milieu. It seems, however, that the summoning of the kadi generally relied on the notability and social grouping of the litigating parties. In the majority of the suits for which the kadi was summoned to the

² Suraiya Faruqi, *Stories of Ottoman Men and Women*, 185. For nineteenth-century Egypt see Judith E. Tucker, *Women in Nineteenth-Century Egypt*, 96.

plaintiffs' house, the plaintiffs were either members of families with prestigious titles or had a relatively large amount of wealth.³

For instance, a regent, 'Abdū'l-laṭīf Efendi, was dispatched to the house of Meḥmed Muḥyiddīn Efendi, son of 'Abdū'l-raḥmān Efendi, to oversee the settling and registration of Meḥmed Muḥyiddīn's repudiation of his wife, Ümmetullāh, daughter of 'Alī.⁴ Meḥmed Muḥyiddīn, a resident of the Sancaḳdār Ḥayreddīn neighborhood which was in close proximity to the Dāvud Pasha court, who preferred to resolve his divorce settlement in the privacy of his household rather than in court. His father's and his own titles of 'efendi' indicate that Meḥmed Muḥyiddīn belonged to the learned elite milieu for at least two generations. Hence, his desire to arrange the settlement in his house might have been due to his perception of himself as above the 'common folk'. It may be that a more specific concern for him was to preserve the privacy of his family life and to prevent his wife from being seen and heard in public. It seems that the possibility of a negotiation process transpiring in an unrestricted communal sphere threatened Meḥmed Muḥyiddīn Efendi because the outward disclosure of his private affairs had the potential to disgrace him.

On June 6, 1795, Ümmetullāh, Meḥmed Muḥyiddīn's wife, stated in her testimony that her husband, upon pronouncing her divorced, had given her 105 gurushes as per her delayed dower and a sum of twenty gurushes for her allowance and waiting

³ İlber Ortaylı, "Kadı," *TDVİA* 24 (İstanbul, 2001); Uzunçarşılı, *İlmiye Teşkilatı* I, 83-143; İlber Ortaylı, *Osmanlı Devleti'nde Kadı* (Ankara, 1994); Bayındır, *İslam Muhakeme Hukuku*; Özer Ergenç, "18. Yüzyılda Osmanlı Taşra Yönetimi," *JTS* X (1986), 94-96. For the changing roles of kadis and regents after the introduction of the Tanzimat reforms, see Jun Akiba, "From Kadı to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," *Frontiers of Ottoman Studies: State, Province, and the West* I, eds. Colin Imber and Keiko Kiyotaki (London, New York: I.B. Tauris, 2005), 43-61.

⁴ *DPM* 25, 20/2 (6 June 1795).

period maintenance. What was uncommon for such repudiation settlements was Ümmetullāh's further statement that the couple had a shared property in the same neighborhood, a *şandālcı kārḥānesi* (boatmen's workplace), of which she owned half. As a part of their divorce settlement, Ümmetullāh had transferred the entitlement to her husband and absolved her claim on the establishment in return for the funds she received. She also reimbursed her husband with three gold bracelets, one of which was diamond encrusted. Ümmetullāh stated that during the initial years of their marriage, she temporarily put these bracelets in pawn, and upon the request of her husband she took them back, granting them to him as part of their settlement. After Ümmetullāh's testimony, the case was settled and recorded in the register in the presence of the Muslim witnesses comprised of the neighborhood's imam and muezzin among other notable figures in the vicinity. This divorce settlement also demonstrates how property was shared within marriage. It is probable that the couple had acquired the common possession (*şandālcı kārḥānesi*) during the course of their marriage, for had it belonged only to one of them, it would have been mentioned in Ümmetullāh's statement. She had absolved her entitlement to the establishment in return for her husband's payment of her maintenance and alimony fees. Although the worth of the boatmen's workplace was not mentioned in the record, it is probable that Ümmetullāh had received a reasonable sum as per her alimony. However, it is not possible to determine whether her acceptance of this arrangement was due to her husband's insistence. Since he was a powerful man with social prestige, Meḥmed Muḥyiddīn Efendi would have been able to demand that the divorce be settled according to his requisites.

A similar case was recorded on October 13, 1783, in the register of the Dāvud Pasha court. A junior judge was dispatched to oversee the divorce settlement case held in the house of el-Ḥāc ‘Osmān Efendi, an inhabitant of the Bekçiler neighborhood.⁵ The claimant in the dispute, Selīme Molla Kadın, daughter of Ḥallāczāde Muṣṭafā Efendi, was a resident of el-Ḥāc ‘Osmān’s house. The fact that Selīme was referred to as ‘Molla kadın’ suggests that she was a learned woman, whom, I imagine, might have been giving lessons at her home. Her father’s title also suggests that she was born into an ulema family. Her title carries the connotation that she received a high level of religious education. In her testimony, Selīme Molla Kadın stated that her husband Meḥmed Emīn Agha, son of Süleymān Efendi, was living in Gelibolu, and that they had been divorced by *hul’*. Selīme’s father-in-law’s title indicates that he also was a learned man, however, her husband, being designated as ‘agha’, did not seem to be of the learned milieu. The fact that a court was summoned and convened to record her case during her husband’s absence demonstrates the prestige Selīme and her family enjoyed among their milieu. Hence, she had the requisite power and social status to conduct this private matter in the setting of her choice.

In her statement, Selīme asserted that through the *hul’* settlement, she absolved her right to her dower in the value of 200 gurushes along with her alimony and waiting period dues. She further stated that she returned the gifts given to her by her husband Meḥmed Emīn Agha as part of her dower. These were valuable presents such as jewelry, gowns, and gold. In return, Meḥmed Emīn sent back the wedding gifts she had presented to him, including a silk shirt. The divorce was finalized after the couple exchanged their

⁵ *DPM* 2, 42/2 (1783).

dues. Selīme additionally stated that she appointed her maternal uncle, es-Seyyid Ḥasan Agha, son of es-Seyyid Süleymān, who was a local of the same town as her deputy in Gelibolu, to oversee the execution of the matters relating to her initiation of the divorce. Although the location of the primary residence of the spouses is not clear from the record, it is certain that Selīme had familial connections to Gelibolu. The fact that she was residing in the house of el-Ḥāc ‘ Oṣmān Efendi in Istanbul, instead of her own house or her family’s house, might indicate that she resided in Gelibolu with her husband prior to their divorce. Hence, the record seems to suggest that it was Selīme who preferred to end the marriage and come to Istanbul. Selīme’s case is an example of how the elite milieu utilized the sharī‘a court. Selīme’s status as claimant in her own suit brought her visibility in the registers. Even if the court’s summoning to Selīme’s own setting might have mitigated her appearance in the public sphere, as a woman who had been living in a different city due to her marriage, it revealed her wide and powerful network in Istanbul. While it is possible that this practice was a condition within the norms of etiquette in Selīme’s social milieu, this distinguishing element was exactly what delimited women like her from sharing their experience with other women in the same position of pursuing divorce.

In his influential work on property allocation practices in Mamlūk marriage and divorce settlements, Yossef Rapoport emphasizes the aspect of the “monetization of marriage” in medieval Islamic society, adding that this was a phenomenon mostly supported by women who demanded to be granted the amount promised them as dower and maintenance during the span of marriage rather than receiving it after the divorce.⁶

⁶ Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 53.

Women's insistence on financial support without resorting to a possible divorce showed an incentive for continuity and stability in their marriage. Similarly, in the Ottoman urban context women tried to maintain their financial privileges as wives while they concomitantly desired to stay within the marriage.⁷ If you could not, remarriage offered a more desirable living environment for women than being single or divorced. I will discuss the "monetization" of marriage by primarily exploring the procedures related to the dower and allowance issues and the way maintenance of children was negotiated after the dissolution of the marital union. In doing so, my main purpose will be to demonstrate the extent of the spouses' separation from and dependence on each other in managing their monetary affairs.

Martha Mundy and Richard Saumarez Smith, who examine governance of property in Ottoman Syria in the late nineteenth century, define property as a social relationship between persons concerning material and immaterial 'things'.⁸ Although they focus on provincial agricultural society, their assessment of familial ties as being shaped and defined through ownership of and access to property is a broadly meaningful approach. I find it especially illuminating in my analysis of urban women's agency and strategies in marriage-related property allocation practices in Istanbul. The focus of this section will be to explore the means through which women acquired property from their

⁷ In the records of the Dāvud Pasha court, the number of *nafaqa* cases as alimony after divorce was much lower than the cases of *nafaqa* as allowance for the upkeep of the household and children during marriage in the years 1782-1840. Note, however, the rise of requisition on behalf of married women in 1830-31 and 1839-40. The reason for the rarity of pleas by married women for *nafaqa* as maintenance in marriage could possibly be caused by compulsion from their husbands.

⁸ Martha Mundy, and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (New York: St. Martin's Press, 2007), 2. Beshara Doumani applies this concept to the endowment strategies of individuals in the conjugal unit in his "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," *Comparative Study of Society and History* 40/1 (1998): 3-41.

paternal family and their husbands, the ways in which they managed this property, and the correlation between their marital status and their position as beneficiaries.

The Dower (*Mehr*)

Before examining the role of property in relation to marriage, it is important to determine how and in what modes these possessions were acquired by a woman upon becoming a wife. As discussed in the first chapter, the Ottoman Hanafî tradition emphasized marriage's contractual foundation. For a marriage to be considered valid and binding, the prospective husband and wife were expected to settle on a dower amount, which was a nuptial gift given directly to the bride.⁹ Although there could have been occasions when the bride's father or closest male kin may have seized the dower, this could not be detected in the sicils since they are official legal records that try to conform to the law. Hence, although it is rare to see instances outside of the legal norm described in court records, it should be noted that such deviations from the norm constitute the substance of the case.¹⁰ This was especially true when the marrying woman was a minor,

⁹ See the two articles by Akyüz regarding the role of the dower as an important part of marital unions: Jülide Akyüz, "Evlilik Sözleşmesinin Önemli bir Ögesi Olan Mehr Hakkında Bazı Düşünceler," *TAD* 37 (2005): 214-28; idem, "Osmanlı Kadınlarının Hukuksal Haklarını Kullanımı Hakkında Bazı Değerlendirmeler," *Hacettepe Üniversitesi Türkiyat Araştırmaları Enstitüsü Dergisi* 6 (2007): 75-91.

¹⁰ In a fetva, Yeñişehirli 'Abdullāh Efendi addresses the issue of who received the dower when the marrying girls are minors: "*Question*: Zeyd, who is an inhabitant of a small town married Hind, his young daughter of eleven years, to Amr for the promise of such and such akças advanced dower. Would Amr be able to take Hind to his own house in the same town without paying the aforementioned dower? *Response*: No, he would

since it was required by the sharī'a that her dower to be paid to her father before the consummation of the marriage. Since the father was regarded as the primary guardian of a bride-to-be throughout the course of her engagement and the drafting of the marriage contract, it was only natural that he inherently became the protector of her personal property even after she moved to her husband's household.

The dower is not to be confused with bride price (*başlık*) or present of the bridegroom to the bride (*kalın*), which were regional customary practices not recognized nor imposed by the sharī'a. Ze'evi has pointed to the misuse of the term bride price stating that it was at times used interchangeably with the term dower.¹¹ He suggested that bride price was often translated to imply that it was a sum granted to the relatives of the bride, and since this was not always the case, the term dower seems more appropriate. The opinion that the dower was not a purchase price was supported by the fact that a person was not permitted to offer himself or herself for sale in Islamic law. Although its value would generally be determined by custom, the dower was clearly a Qur'anic concept.¹² Suraiya Faruqi has stated the possibility that the dower was sometimes paid in full at the time of the marriage in the fifteenth century, suggesting that further research would allow for more definitive answers to questions concerning the allotment practices

not" in Yeñişehirli, *Behçetü'l-Fetāvā*, 79. This fetva makes clear that minors could not directly receive the dower amount. Instead, the son-in-law was required to pay the father the stated amount of dower. Without the payment of the advanced portion of the dower, the man and the woman would not be considered as legally bound spouses. The marriage was only effective after the bestowal of the dower.

¹¹ Ze'evi, "Women in 17th Century Jerusalem," 164-165.

¹² I thank Engin Deniz Akarlı for his valuable suggestions on an earlier draft of this section. He has especially brought to my attention the meticulous differences between customary and Qur'anic practices. On different customary practices regarding the bride price, see Moors, *Women, Property, and Islam*, 127; Meriwether, *The Kin Who Count*, 117-120.

of dowers.¹³ According to my sources, in the late-eighteenth century the dower was given in two installments. When women received the deferred portion, it was in the form of their inheritance share or divorce alimony.¹⁴ It is not clear from the sources whether the division of these two installments was standardized, while some scholars hold that the second installment equaled either half or two-thirds of the entire amount.¹⁵ On the other hand, Meriwether has pointed to the methodological problem of determining dower values, stating that the values mentioned in the sicils of eighteenth-century Aleppo were only the deferred portions, and they usually indicated one-third to one-fifth of the total.¹⁶

Rapoport observed that the dower was a means to exaggerate one's social status in fourteenth-century Mamlūk society.¹⁷ Based on Geniza documents, involving mostly Jewish communities that contained records of generous amount of gifts allotted to brides in marriage contracts, he notes a similar tendency among Muslims and suggests that the exaggeration of the real value of the marriage gifts was commonly practiced. In the case

¹³ Faroqhi speculates relying on the estate inventories of the husbands of two wealthy women in Bursa. She suggests that since these women were not owed a deferred portion of the dower, it may be assumed that they had received the dower in full at the time of the drafting of the marriage contract stating, "either this bridal gift in the fifteenth century sometimes was paid in full at the time of the wedding, or the two women had renounced their claims," in Suraiya Faroqhi, *Stories of Ottoman Men and Women*, 136.

¹⁴ The fetva of Yeñişehirli 'Abdullāh Efendi clarifies this issue: "*Question*: Would Hind be able to force Zeyd to bestow her the deferred portion of her dower while their marriage was still effective? *Response*: No, she would not" in *Behçetü'l-Fetāvā*, 88.

¹⁵ Knut S. Vikør, *Between God and the Sultan: A history of Islamic Law* (Oxford, New York: Oxford University Press, 2005), 302.

¹⁶ Meriwether, 117-118. An interesting fetva by Yeñişehirli 'Abdullāh Efendi states that if a man married a woman with the assurance of granting her a certain amount for her advanced dower and a certain amount for her deferred dower at the time of the marriage and then he divorced her by irrevocable repudiation after the consummation of the marriage, it would suffice for the husband to only give her half the deferred dower and demand half the advanced dower which was previously taken by the bride, in *Behçetü'l-Fetāvā*, 90. Since the sicils that I examined did not comprise such a particular instance, it might be that the procedure indicated in this fetva was not a commonly known or practiced one.

¹⁷ Rapoport, 54.

of late eighteenth-century Istanbul, it was not possible to document a similar practice due to the rarity of registered marriage contracts in which the value of the dower was stated. However, as in Aleppo, specific percentages found in the ledgers showed that the amounts stated were the deferred portions of the dower.

Meriwether observed that in the last decades of the eighteenth century, the nominal values stated for the deferred dower ranged from 150 to 500 gurushes with an average of around 200 gurushes. She observed that in the second and third decades of the nineteenth century, the range of the deferred dower varied in size from twenty-five gurushes to 3,000 gurushes, with an average of 500 gurushes.¹⁸ Meriwether explains the increase in the size of the deferred dowers by the sudden rise in overall prices during the early decades of the nineteenth century.¹⁹ I examined the sicils of the Dāvud Pasha, İstanbul Bāb and Ahī Çelebi courts between the years 1782-1840, as well as 264 estate records of corresponding years, to establish whether there were any major fluctuations in average deferred dower amounts in the period under scrutiny (refer to Table 4.5 in the next chapter). The dower amounts were obtained from cases regarding marriage, divorce, inheritance, and allowance. As the figures displayed below indicate, the yearly dower averages based on the nominal amounts seemed to increase in all three courts though the increasing rate naturally varied in each court (Figures 3.2 to 3.4):

¹⁸ Although in her comparison of dower and house prices the author considers the inflation rate for the price of houses, she does not mention whether she has corrected her average dower values for inflation. Hence, her assessment that the dower values were comparable to the price of houses might be somewhat misrepresentative, see Meriwether, 118.

¹⁹ Ibid, 119.

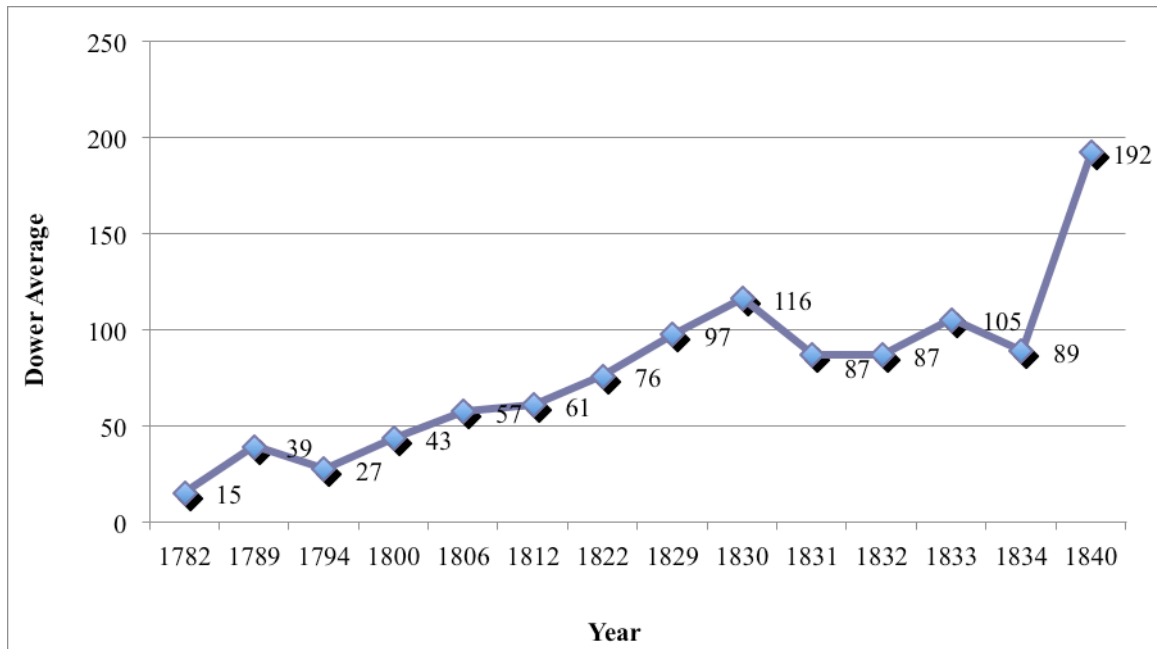


Figure 3.2 Yearly Average Value of Nominal Dower in Gurushes in the Dāvud Pasha Court

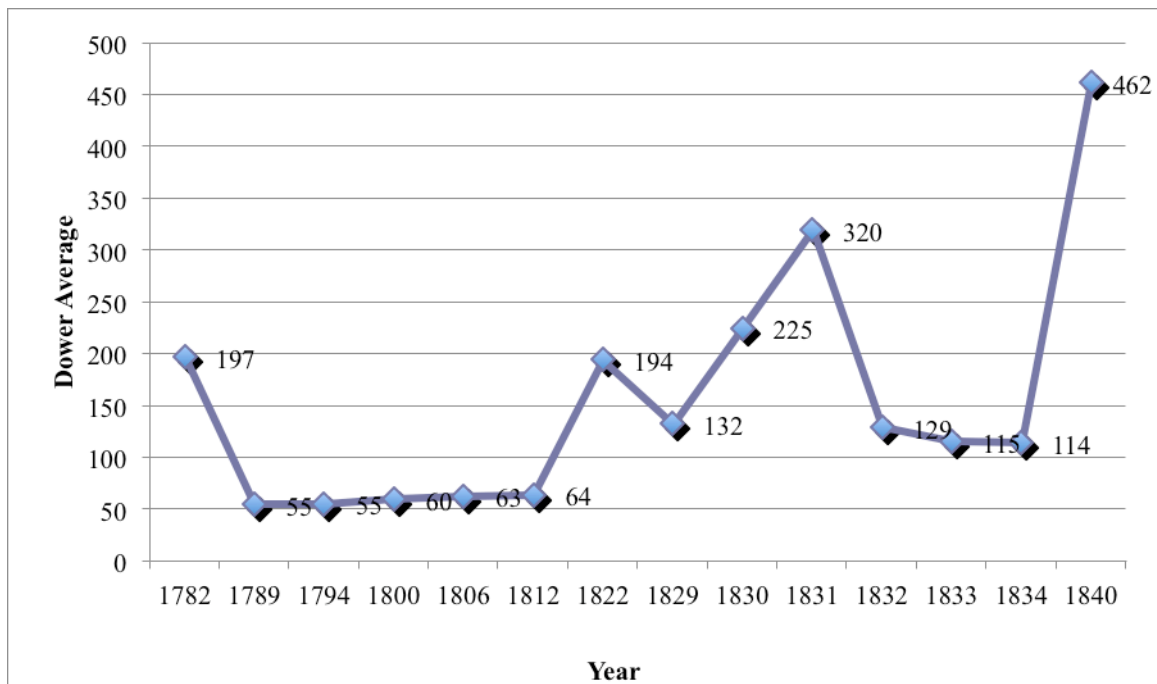


Figure 3.3 Yearly Average Value of Nominal Dower in Gurushes in the İstanbul Bāb Court

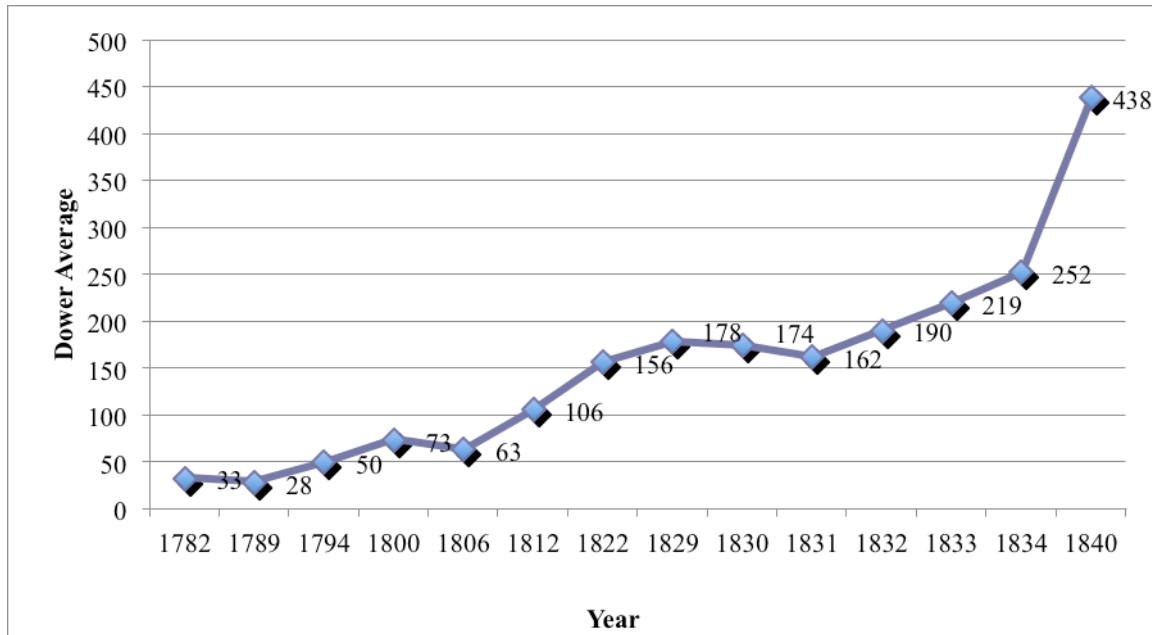


Figure 3.4 Yearly Average Value of Nominal Dower in Gurushes in the Ahî Çelebi Court

In the Dāvud Pasha court, the peak years in the average of nominal dower values are 1830 and 1839. A rapid and sharp decline does not occur in the records of this court. The rise in the nominal value of the average dower between 1782 and 1840 is 46.95%. In the İstanbul Bāb court, the average dower in 1782 is significantly higher than the averages in the other two courts. Two sharp declines occur in this court, one between 1782 and 1789, and the other between 1830 and 1832. The four years following 1834 are characterized by a sudden ascent. There is a 42.44% rise in the nominal value of the average dower between 1782 and 1840. In the Ahî Çelebi court the peak years are 1829 and 1838. There are no rapid declines in the records of this court. The rise in the nominal value of the average dower between 1782 and 1840 is 37.9%.

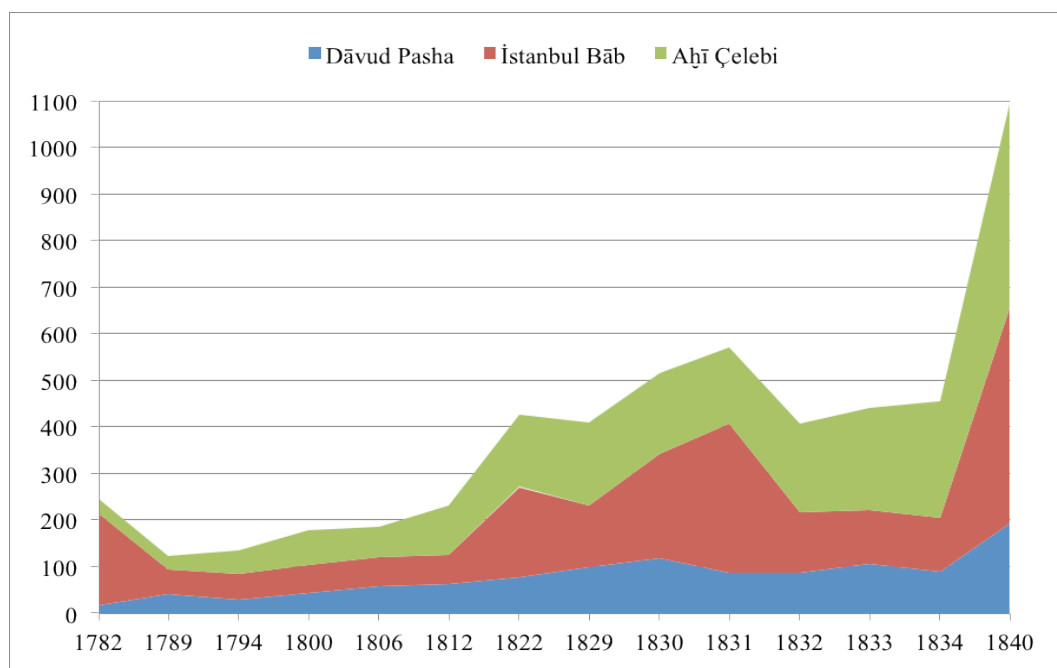


Figure 3.5 Comparison of the Yearly Nominal Average of Nominal Dower Values in All Three Courts

The figures above suggest a definitive rise in the percentage of average nominal dower values registered in each of the three courts. As it was observed in the case of Aleppo during the same period, the nominal dower values in Istanbul also rose in accordance with the rise in overall prices in the early decades of the nineteenth century.²⁰ According to Şevket Pamuk, the period comprising 1769-1843 was dominated by “the most rapid rates of debasement in Ottoman history, high inflation, and rising real wages.”²¹ The two principal factors that caused high inflation were the reduction of the

²⁰ Meriwether, 117-118.

²¹ Şevket Pamuk, “Prices in Ottoman Empire,” 468.

specie content of the currency and the overall price increase due to debasements. Pamuk suggested that the debasements that started in the 1780s progressed during Maḥmūd II's reign (1808-39).²² The significant rise in the recorded dower amounts, however, should be reconsidered in terms of the consumer price indexes, calculated in terms of the silver content of the gürüş. Pamuk specified the worth of one gürüş as 120 akças after 1720 for Istanbul.²³

The fluctuations in the economy between 1789 and 1850 resulted in a rapid decline of the silver content of the currency at an annual rate of 3.49%, and prices rose at an annual rate of 3.81% during this period.”²⁴ The apparent rise of the average dower value may only project an accurate result by taking into consideration the major

²² Pamuk, 451.

²³ Ibid. For a more detailed study of Pamuk's that focuses on the late eighteenth and the first half of the nineteenth century, see Şevket Pamuk, *İstanbul ve Diğer Kentlerde 500 Yıllık Fiyatlar ve Ücretler, 1469-1998* (Ankara: Devlet İstatistik Enstitüsü, 2001). “For the 65 years of the century the gürüş remained almost constant in value. In 1760-1812 the gürüş devalued at an average annual rate of 3 to 3.5%, not a rate which could be called socially disruptive” in Süleyman Özmucur and Şevket Pamuk, “Real Wages and Standards of Living in the Ottoman Empire, 1489-1914,” *JEH* 62 (Jun 2002), 293-321.

²⁴ See Eldem's cautionary note on the intrinsic value of the Ottoman gürüş being hard to determine given the lack of precision of purity and weight: Edhem Eldem, *French Trade in the Eighteenth Century* (Brill: Leiden, 1999), 117, fn. 18. For an assessment of the gram content of the gürüş see Şevket Pamuk, “The Great Ottoman Debasement, 1808-1844: A Political Economy Framework,” eds. Israel Gershoni, Hakan Erdem and Ursula Woköck, *Histories of the Modern Middle East, New Directions* (Boulder: Lynne Rienner Publishers, 2002), 21-36. Pamuk states that “prices of some foodstuffs (meat, flour, milk, eggs) and wood for burning rose 400-700 fold during the period of four and a half centuries. To the extent the commodities with higher rates of price increase were essentials and had a higher share in the budget of lower-income consumers, the overall rate of inflation faced by the lower-income groups must have been higher... the cumulative rate of inflation faced by unskilled workers from 1469 to 1914 was 10% higher, and the overall inflation faced by skilled construction workers was 10% lower than the averages provided by our consumer price index. The divergence between cumulative prices faced by unskilled workers and higher-income groups was probably even wider” in Pamuk, “Prices in Ottoman Empire,” 458. For a detailed review of the prices of foodstuffs in the late-eighteenth- and early-nineteenth centuries, see also Lynne Marie Thornton Sasmazer, “Provisioning Istanbul: Bread Production, Power, and Political Ideology in the Ottoman Empire 1789-1807,” (Ph.D. dissertation, Indiana University, 2000); The chapter by Charles Issawi also gives information regarding prices during the late-eighteenth and early-nineteenth centuries in Istanbul and other cities of the Empire: Charles P. Issawi, *The Economic History of Turkey, 1800-1914* (Chicago: University of Chicago Press, 1980), 321-341.

devaluation of the silver content of the Ottoman currency and the rise of inflation.²⁵ The two figures below illustrate the real values of dower in three courts after they were corrected for devaluation and inflation, the number within each color indicating the average value of dower particular to that court. It shows clearly that peaks and falls nearly overlap in all three courts (Figures 3.6 and 3.7):

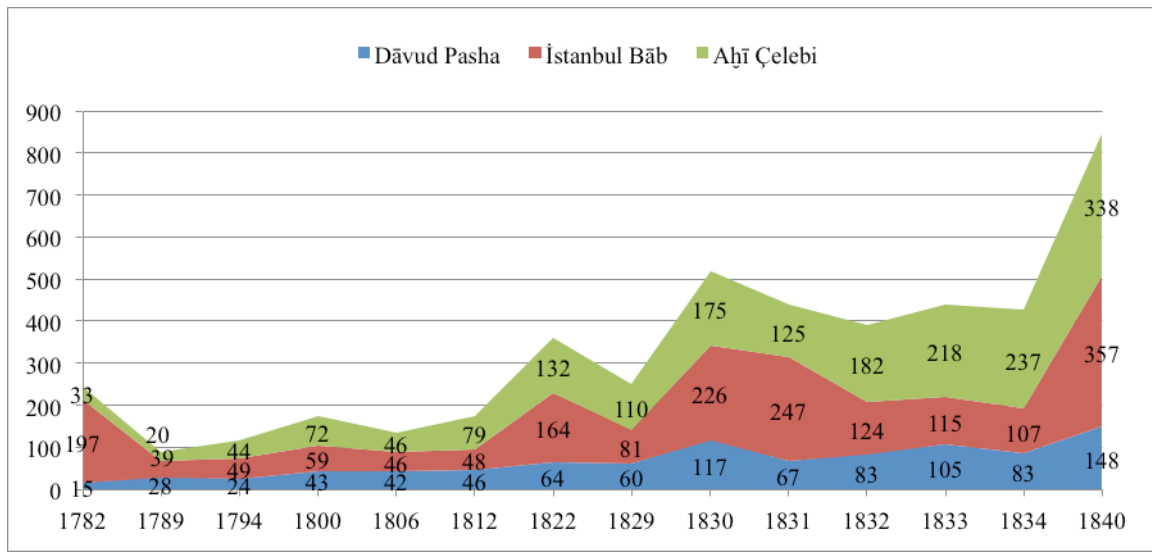


Figure 3.6 Real Values of Dower After Devaluation and Inflation is Corrected

²⁵ The calculation of the inflation rate is based on the consumer price indexes demonstrated by Pamuk, which also takes into account the real value of the silver content of the guruh in his Şevket Pamuk, *İstanbul ve Diğer Kentlerde 500 Yıllık Fiyatlar ve Ücretler*, 16-17.

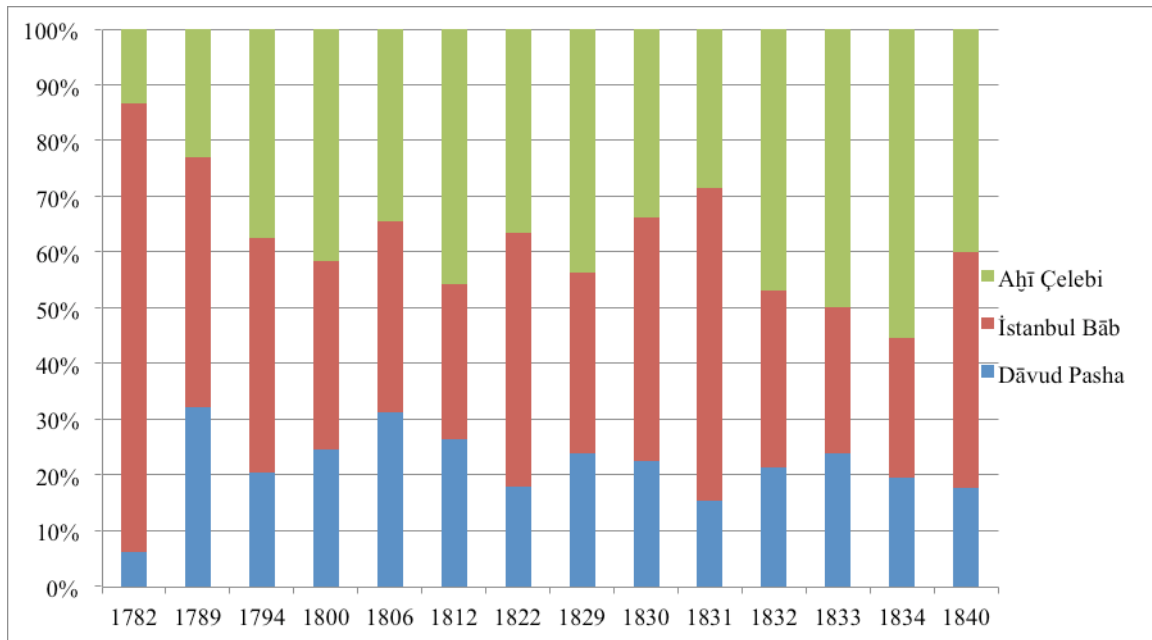


Figure 3.7 Real Values of Dowry in Percentages after Devaluation and Inflation is Corrected

As demonstrated in a study by Pamuk and Özmucur, the rise of real wages in Istanbul in the beginning of the nineteenth century and its continuation until the 1870's could be one way of explaining the rise in dowry values even after inflation is corrected.²⁶ Meriwether argues that the size of dowry was not “absolutely” determined by wealth and social class based on the sole fact that the two largest dowries in her sample were given by two common craftsmen. She avers that the fact that she found the value of dowries paid by upper-class families was significantly larger than the lowest recorded dowries does not necessarily negate her statement since this only occurred in a few cases.²⁷ I maintain that the standard of living and the social status of individuals had a direct bearing on the size of dowry offered to a woman. Galip Eken, in his study of three ledgers from late eighteenth-century Antep also

²⁶ See Süleyman Özmucur and Şevket Pamuk, “Real Wages and Standards of Living,” 225.

²⁷ Meriwether, 119.

argued that there was an absolute connection between the dower amount offered by a husband and his social status and level of wealth. According to his assessment of these ledgers, the lowest deferred dower was in the amount of two gurushes more than 55 % of men gave ten gurushes, and only one man gave the highest dower in the amount of fifty gurushes.²⁸ An important methodological concern here is the number of cases recorded in each court per year, since they each attracted a different volume of attendees. Consequently, although my findings tally with those of Özmucur and Pamuk, further scholarship on monetary history of this period will probably yield more precise and conclusive results regarding dower values and their place in society.

A few examples from the court records substantiate our understanding of the pivotal role of dower in property allocation strategies in marriage. A case entitled “proof of divorce at the wife’s initiation” and registered by Şāliḥa demonstrates how the allocation of the dower after remarriage was regulated.²⁹ In the lawsuit dated November 25, 1806, Şāliḥa of the ‘Alī Pasha-yı ‘Aṭīḳ neighborhood declared, “I have initially agreed to marry Meḥmed for a deferred dower of 3,000 aḳças. After he agreed to this amount and became my lawfully wedded husband, he divorced me by repudiation. While my previously mentioned deferred dower was still in his possession, he remarried me, this time with a new deferred dower in the amount of one hundred aḳças.” After Şāliḥa stated that she had settled for the newly agreed upon sum and remarried Meḥmed, he divorced her again. Şāliḥa’s second divorce ended with her husband owing her 3,100 aḳças. The couple then remarried for a third time agreeing upon another deferred dower of one hundred aḳças. Şāliḥa demanded that the court investigate the matter and went on

²⁸ Galip Eken, “XVIII. Yüzyıl Ortalarında Antep’te Aile,” 114.

²⁹ *İBM* 334, 12/5 (25 November 1806).

to claim, “after we were married and he became my husband for the third time, I initiated a divorce relinquishing my deferred dower of one hundred akças from our third contract three months prior to the recording of this document. And when he agreed to this, I became free of Mehmed. I now demand my agreed deferred dower of 3,100 akças from the first and second times, which he owes me.” The court then interrogated Şāliḥa’s husband Mehmed. He stated in his defense that he had contracted his first marriage to Şāliḥa for a dower of 3,000 akças, the second one for one hundred, and the third for another one hundred akças. However, Mehmed declared, “the aforementioned Şāliḥa has initiated divorce from me at the previously mentioned date. By relinquishing all of her rights to the agreed total of the three postponed dowers in my possession in the presence of Muslim believers, and by my acceptance of the divorce, Şāliḥa became freed from me.” After an interrogation and hearing the valid testimony of witnesses regarding the matter, the court decided to rule against Şāliḥa, prohibiting her from pursuing this controversy.

Unfortunately, the record does not provide sufficiently detailed information on the complications spouses encountered after their consensual divorces to allow us to surmise the motives behind Şāliḥa’s claim. Although her testimony that she did not receive her agreed upon deferred dower of 3,100 akças after the two repudiations might seem viable at first, her husband’s defense and its approval by witnesses make it clear that Şāliḥa intentionally omitted her renunciation of all her previous claims to dower in the divorce settlements. Şāliḥa, by the mere act of applying to court, seems determined to obtain something out of her action, though not necessarily the full sum of money. However,

even if it is impossible to ascertain her motive from this record, it is evident that she had other concerns in mind.

According to the sharī'a, in the occurrence of revocable divorce, the obligations of marriage resumed. This meant that the husband and wife would be responsible for one another and would maintain the right to inherit from one another. The wife would still be viable to demand her maintenance and suitable living conditions from her husband, and the husband maintained the right to recant his decision to divorce during the waiting period. However, if the husband waited until after the end of the waiting period, the marriage would be definitively dissolved. If in this instance the dower was not paid, or if the two parties did not agree that the husband would pay it later, the dower would become incumbent on the husband as an advanced dower. If the couple decided to remarry, they would have to designate a new dower amount and contract a new marriage.³⁰

On August 23, 1795, Fāṭma and her husband Meḥmed 'Ārif, a resident of the Ereğli neighborhood, were present in court to contract their marriage.³¹ Fāṭma stated that she had been previously separated from Meḥmed 'Ārif by a revocable divorce. She now registered in court their decision to remarry with a dower in the amount of fifteen gurushes in the presence of witnesses. Fāṭma also stated that she and her husband had privately settled the payment of the deferred dower between themselves. The registration of the marriage contract in the sicil was an atypical occurrence for this period. The examination of a total of forty-two ledgers of sharī'a court records yielded only six cases of the marriage contract registration. According to the sharī'a, a couple separated by

³⁰ Bilmen, II, 236-237.

³¹ *DPM* 25, 48/5 (23 August 1795).

revocable repudiation could only renew their marriage by the statement of a newly established dower amount. Hence, Fāṭma and Meḥmed ‘Ārif publicly announced their remarriage by proclaiming only the advanced portion of the dower, resolving that the amount of the deferred portion was to be settled among them privately.

It is interesting to note that a similar case occurred in the same register only a week after Fāṭma and Meḥmed ‘Ārif’s remarriage. On August 31, 1795, Naẓīfe, the divorcee of ‘Oṣmān, presented her case in court regarding a certain es-Seyyid İbrāhīm.³² Naẓīfe claimed that she had previously been married to ‘Oṣmān, who divorced her by repudiation prior to the consummation of the marriage. Naẓīfe, who was approximately thirteen years of age and who had already reached puberty and had her period, explained that she was willing to marry the aforementioned es-Seyyid İbrāhīm. She further stated that es-Seyyid İbrāhīm promised to give her an advanced dower in the amount of forty gurushes and a deferred portion of the dower in the form of such household possessions as four pillows, a pair of little cushions (*maḵ‘ad*), one locally-made (*beledī*) cushion, one head pillow, one sheet with a duvet, two pans with lids, one pot with a lid, and a small brass tray. The case was recorded and registered in the presence and approval of witnesses, and both sides agreed to the terms of the marriage contract.

In the court cases of Fāṭma and Naẓīfe, both women were separated and divorced from their husbands. Fāṭma was remarrying her previous husband, whereas Naẓīfe was contracting a second marriage to another man. Fāṭma’s age is not recorded. Naẓīfe’s age, on the other hand, was mentioned as thirteen. Despite her young age, Naẓīfe had already been married twice. The structure of language in both these records designated both

³² DPM 25, 57/3 (31 August 1795).

women in relation to their husbands. Although each woman was about to begin a new life with a man (in Fāṭma's case with the same man), they were still presented as the 'divorced wife of so and so.' Fāṭma, who was possibly older than Naẓīfe and who had been married for a certain amount of time to her husband Meḥmed 'Ārif, received only fifteen gurushes when she remarried him. Although Naẓīfe had previously been married to 'Osmān, the record mentioned that they had not consummated the marriage, emphasizing her virginity. In her remarriage to es-Seyyid İbrāhīm, Naẓīfe received a much higher advanced dower than Fāṭma, acquiring forty gurushes. In addition, Fāṭma's deferred dower was downplayed in the record, while the household possessions that Naẓīfe was to receive as her deferred dower were listed in detail.³³ Hence, virginity—rather than being divorced—seems to have been the quality deemed most important. The record demonstrates that the dower could also be paid by means other than money. In eighteenth-century Antep, too, there was a difference between the dower amounts of a virgin maiden and a once divorced or widowed woman.³⁴ Virgins' dowers were

³³ Compare the story of these two women to that of the marriage arrangement of a previously married woman in Alexandria. It was noted by Abdal-Rehim that the bride's dower seems to indicate that virgins received higher dowers than those women who had previously been married: Abdal-Rehim Abdal-Rahman Abdal-Rehim, "The Family and Gender Laws," 99. For a discussion on the virginity of brides and fetvas that were against the testing of virginity in Ottoman Syria and Palestine: Tucker, *In the House of the Law*, 67-68. According to Tucker, the fetvas of Khayr al-Din downplayed the correlation between a woman's virginity and the legal contracting and consummating of a marriage, stating that, "men who found that their brides had been previously 'deflowered' were informed that they could not cancel the marriage, send the bride back home, or demand the return of the *mahr*," 67. However, there were also entries in the sicils regarding fathers who were so bothered by hearsay about their daughter's virginity that they went as far as to prove the girl's virginity by the involvement of four midwives: Abraham Marcus, *The Middle East on the Eve of Modernity*, 323-324. Hence, it seems that court notarization was one of the means to provide one with a refreshed social image, though the record itself was a reminder of the once publicized loss of a woman's innocence.

³⁴ Galip Eken, 114. Güven Dinç has suggested that despite the equal division of a man's estate among all his wives, there still were differences in the deferred dowers of the wives. I argue that this difference seems to be the result of whether a woman was a virgin or previously married at the time of the marriage contract. Since the equal division of the estate among each wife was the shari'a principle, the only viable explanation seems to have been the differences between the wives regarding their prior marital status: Güven Dinç, "Şer'iyye Sicillerine Göre XIX. Yüzyıl Ortalarında Antalya'da Ailenin Sosyo-Ekonomik Durumu," *OTAM* 17 (2005), 109.

generally much higher than those of divorcees. Consequently, it is possible to conclude that the value of a dower depended on a woman's paternal family and status since one of the most important factors affecting it was the woman's virginity.

Rapoport's study on the allotment of the dower in Mamlūk Egypt maintained that the dower's deferred amount would be paid in a stated period such as one to five years.³⁵ My data reveals, however, that setting a time frame for the allotment of the deferred portion of the dower was not generally practiced in the late eighteenth-century sicils of Istanbul. A frequent occurrence was that the deferred dower amount surpassed the portion granted as advanced dower. According to customary practice, the payment of the dower was expected regardless of consummation of the marriage. The inability of the husband to consummate the marriage due to impotence, or any other health-related matter, was considered irrelevant to the payment of the dower. A husband who could not have intercourse with his wife would still be liable to provide her with half of the promised amount of dower. A fetva of Yeñişehirli 'Abdullāh Efendi regarding both the minor status of the woman and the issue of non-consummation suggested that a man who had not consummated the marriage due to his wife's condition would still be liable to pay half the agreed amount of dower to her. In this particular case, the fetva concerned a bride whose marriage was contracted when she was nine years old, and a dower had been promised to her at the time of the contract.³⁶

³⁵ Yossef Rapoport "Matrimonial Gifts in early Islamic Egypt," *ILS* VII (2000), 9-15.

³⁶ *Behçetü'l-Fetavā*, 89.

The ulema stated that the size of the dower could be freely negotiated among the parties involved, as long as it was not less than the ten-*dirhem*³⁷ minimum prescribed by the sharī‘a. The dower was a wife’s lawful possession, and the husband was obliged to provide her the established amount when she demanded it. Although the hanafī school accepted the lowest standard amount for dower as ten silver dirhams, the husband’s financial status was taken into account before agreement on a particular sum.³⁸ If a certain amount for the dower was not stated in the contract, a sum that was most fair and that reflected the woman’s social status would be designated. Usually, the sum would be established by matching the average dower on the paternal side of the bride’s family. Consequently, a higher dower would suggest the woman’s family had higher wealth and social status. Hence, a woman’s social status and individual wealth had a great impact on her negotiating stance.³⁹ The law prohibited the husband from engaging in trade, transfer, or loan of the confirmed amount of the dower without his wife’s approval.⁴⁰

The 1783 case regarding a certain ‘Āyşe demonstrates the kind of furnishings and utensils women tended to supply for their new household.⁴¹ ‘Āyşe, who was a convert to Islam, resided in the İbrāhīm Pasha neighborhood near Silivriķāpı. On the fourth day of September 1783, ‘Āyşe’s proxy, Müezzīn ‘Abdī Efendī, presented her case involving her husband Ḥasan Beşe in the Dāvud Pasha court. In his testimony the müezzīn said, “my

³⁷ A *dirhem* was a unit of currency. The weight of the Ottoman gürush was revised upwards to eight dirhems in 1703.

³⁸ Cin, 216; İlber Ortaylı, “Anadolu’da 16. Yüzyılda Evlilik İlişkileri Üzerine Bazı Gözlemler,” 36.

³⁹ Also see Fariba Zarinebaf-Shahr, “Women, Law, and Imperial Justice,” 93.

⁴⁰ Ibid, 92; Bilmen, II, 702-705.

⁴¹ DPM 2, 24/1 (4 September 1783).

client ‘Āyşe who resides with her husband Ḥasan Beşe in a house located in the aforementioned neighborhood has a pair of ten-carat-gold bracelets, a pair of four-carat-gold belts, six çatma pillows, two seat cushions, two pairs of quilts, one mattress, two head pillows, and one mattress sheet, one shawl patterned dress, one overcoat, one macramé veil, one bath pot, four serving platters with lids, two pots, one large tray, and two candlesticks as her household possessions. She bestows these items, as well as the rest of her valuable property present in their shared house, to her husband Ḥasan Beşe. From now on they are all his possessions, and my client ‘Āyşe has no ownership rights over them. In addition, ‘Āyşe has also devolved her delayed dower in the amount of 4,000 akças (equivalent of thirty-three gurushes) to her husband. She sold the aforementioned possessions to Ḥasan Beşe for a total of twenty gurushes.” Consequently, this record tells us that the delayed portion of the dower was an object of negotiation. Even if ‘Āyşe had not received it, she relinquished her right of entitlement to it. Although the reasons behind her action and the circumstances that drove ‘Āyşe to such a decision cannot be ascertained from the document, it is important to note that the spouses were not being separated or divorced. Perhaps her husband coerced ‘Āyşe to grant her possessions to him in cash and in kind. Perhaps the couple previously owned some of these possessions jointly, but they became the sole property of the husband after registration of the case. It is clear from the case that ‘Āyşe’s consent was pivotal in this transaction involving the transfer of her rights on the dower and her own private property.⁴²

⁴² The *Hidayah*, one of the authoritative manuals of hanafī jurisprudence from the thirteenth century, emphasizes that not naming the dower at the time of the marriage contract is not a detrimental factor because a wife may at times agree to the passing of ownership without a counter-value out of respect, while at other

According to the hanafī school, payment of the dower in full was considered to be proof of consummation of marriage, and half of it would still be due if the marriage was not consummated. The dower secured the wife's interest against a possible divorce.⁴³ The deferred portion of the dower protected the wife by hindering the husband's absolute entitlement to divorce her. The deferred dower was also regarded as an assurance for the continuity of the woman's wellbeing in the case of her husband's death. Thus, dower as an entity, embodied the mutual rights and obligations that the conjugal pair had toward one another.⁴⁴ Women who forfeited their deferred dower and followed through with the *hul'* either had to be independently wealthy or they relied on their family for financial support.

The record regarding Ümmühān illustrates the wife's entitlement after divorce to the full sum of the dower that was promised to her.⁴⁵ In June 1783, Ümmühān, a resident of the Veled-i K̄arabaş neighborhood located in Silivrikāpı, stated her request in court regarding her father-in-law, Muştafā, and her husband, İbrāhīm, who was not present. Ümmühān's husband had married her with the promise of a dower of fifty gurushes. İbrāhīm divorced her with an irrevocable repudiation thirty-three days prior to the documentation of this case. In her testimony, Ümmühān declared that Muştafā had become the guarantor of the dower at the time of her wedding to his son İbrāhīm.

times she may not give her consent for an amount that was substantial. If the husband divorced her prior to the consummation of the marriage, the payment of half of the dower became obligatory according to the hanafī school. See al-Marghīnānī, *Al-Hidāyah*, 508.

⁴³ Cin, 54.

⁴⁴ Zilfī raised the issue that “the sums in a sense served as divorce insurance for women—a minimal welfare net for repudiated women or bargaining leverage for women seeking release through *hul'*” in Madeline C. Zilfī, “‘We Don’t Get Along,’” 273.

⁴⁵ DPM 2, 71/9 (6 June 1783).

Muṣṭafā gave Ümmühān half of the promised sum, namely twenty-five gurushes. Now that the divorce had taken place, she rightfully requested the payment of the remaining twenty-five gurushes. The court sided with Ümmühān, requesting Muṣṭafā to pay the rest of her dower. The fact that Muṣṭafā was present in court and that his son, Ümmühān's husband, was absent might be because he was out-of-town. The father took İbrāhīm's financial obligation upon himself. Ümmühān was adamant about obtaining the whole of what had been agreed upon. She had been able to prove her statement so that her father-in-law did not have to do much more than pay her the rest of her dower in the amount of twenty-five gurushes. It is interesting to note that the husband tried to get away with not paying the obligatory portion after the divorce, and it was the assertiveness of the woman and her presence in court that enabled her to acquire what was due to her.

In the case of non-Muslims, the procedure could be more flexible in regard to the court acting as a protective authority for women. The divorce case brought to court by Artin, a non-Muslim residing in the Mīraḥor neighborhood, illustrates this point.⁴⁶ In the documents I analyzed, men were generally the plaintiffs in divorce registration cases involving non-Muslims; in similar cases of Muslims, women appeared as petitioners more often. Hence, Artin claimed in court that he had previously divorced his wife Aranin with an irrevocable repudiation in July 1800. Artin further stated that Aranin agreed to waive her right to her dower at the time of the divorce. Artin registered that he had no legal or monetary obligation to his ex-wife Aranin, and that they were both free to marry whomever they wished. Although the above repudiation case of the non-Muslim couple reads like a *hul'*, it might be recorded in the register according to the procedures

⁴⁶ *DPM* 34, 41/4 (July 1800) and see also for comparison 26/3, 52/2.

of the law. Given their differing marriage traditions and requisites, the kadis might have tailored the records according to the rules of the sharī‘a when Christians were petitioners in the Muslim sharī‘a courts. As we have seen in the previous chapter, the sharī‘a had a few loopholes enabling non-Muslims to circumvent the rules of their own religion when it restricted them in a certain way. Hence, this could explain why Christians preferred the Muslim sharī‘a courts when registering their divorces. It could also be for this reason that Artin desired to stress the issue of remarriage in court.

The Allowance (*Nafaqa*)

In matrimony, a husband was required to provide a dwelling, the maintenance of that dwelling, and the sustenance and clothing of the family according to the sharī‘a. The wife, on the other hand, was not formally obliged to provide an income or share her property in provision of the family.⁴⁷ The court records of Istanbul reveal that although women were not expected to supply their marital house, they generally brought with them the necessary furniture and appliances for their new household. The court cases regarding property have

⁴⁷ The wife was not obligated to support the household income irrespective of her own individual means. Vikør stated that whatever the bride brought with her to the household would generally be part of the bridal gift given to her by her father. Hence, she would be free in her decision to spend her property as she wished. The wife may retain her own funds for herself and still desire to obtain maintenance for the upkeep of the household from her husband. Vikør suggested that a husband’s payment of the allowance enabled the wife to be separately economically active. He further explained that the abundance of court cases registered by women concerning the nonpayment of the household maintenance by their husbands points to women’s ability to express their grievances independently in court: “this is not just an empty formality; many court cases between husband and wife (a wife is free to sue her husband and often does) concern the non-payment of nafaqa,” see Vikør, 303.

presented that women did contribute greatly to the household economy, primarily by the provision of furnishings and other moveable possessions. Joseph Schacht explains that the allowance that was supposed to be provided by the husband generally consisted of foodstuffs, lodging, clothing, and even a servant or a concubine depending on his economic means.⁴⁸ The husband, if capable, was expected to provide a separate house from his paternal family for his wife, or at least a separate room, which would be inaccessible to interlopers. For instance, on January 19, 1783, Zeyneb from the ‘Alī Faḳīh neighborhood presented her testimony in the Dāvud Pasha court.⁴⁹ In her statement, Zeyneb claimed that her husband, es-Seyyid ‘Oṣmān, was housing her with his second wife Emīne. Zeyneb could no longer endure living in the same premises as Emīne and demanded that the court issue a warrant to ‘Oṣmān to provide separate lodging for her. The court favored her request and issued a warrant to es-Seyyid ‘Oṣmān to procure another house for Zeyneb. The wife’s entitlement to maintenance would be suspended if she did not deliver her wifely duties due to being defiant, not having come of age, or being abducted. The size of the allowance generally depended on the status and economic position of the husband and the wife. Primarily, though, the woman’s family’s economic status affected the range of the allowance, which would be assigned irrespective of a man’s ability to supply it. Hence, the aspect of equity once again played an important role in determining the size of the allowance.

The term allowance in Ottoman records designated both the maintenance supplied by the husband during marriage and the alimony dues he was obliged to provide after

⁴⁸ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 167.

⁴⁹ *DPM* 2, 63/16 (19 January 1783).

repudiation. Even though in sharī'a marital support was referred to as *sadāq*⁵⁰, in Istanbul sicils the use of this term was not common in the late-eighteenth century. After a *hul'* divorce, the woman was expected to continue maintaining her house and nurturing and rearing her children until they reached a certain age.⁵¹ The table below illustrates the number of alimony and allowance entries registered by women when their husbands neglected the obligation of providing the designated marital support.

Table 3.1 The Number of Alimony and Allowance Cases Registered by Women in the Dāvud Pasha Court

Year	Alimony after divorce	Allowance during marriage
1782	76	1
1789	9	15
1794	42	1
1800	34	2
1806	48	1
1812	9	0
1822	0	0
1829	37	1
1830	89	0
1831	41	8

⁵⁰ The term, which denotes the giving of alms to the poor, has a second meaning designating a wife's marriage-portion paid to her by her husband.

⁵¹ See Bilmen regarding details on the age of minors for whom the parents were liable to provide the allowance in Bilmen, II, 526-531.

Table 3.1 (continued)

1832	20	2
1833	15	0
1834	17	0
1839	15	5
1840	15	6

A husband was supposed to provide a certain monthly fee as allowance after he repudiated his wife as well as during the waiting period. Naturally, in all the ledgers examined, there were more cases of alimony after divorce than allowance as maintenance within marriage, except for 1789. In addition, more than half the recorded alimony cases concerned children's maintenance after divorce.

The profusion of allowance suits in the records indicates that men potentially neglected their duty to provide for the wives they repudiated, since they were brought forth by women who belonged to the elite milieu and those women who were underprivileged, both demanding their rightful marital support. For instance, the following case demonstrates a wife's economic expectations from her husband. On September 12, 1795, Ümmügülsüm presented her case in the Dāvud Pasha court regarding her husband 'Abdu'l-raḥmān.⁵² In her testimony she stated that 'Abdu'l-raḥmān previously repudiated her and now it was due upon him to give her a dower of

⁵² *DPM* 25, 85/6 (12 September 1795).

thirty gurushes as well as the five gurushes they had agreed on as her alimony. Apart from the dower and alimony, Ümmügülsüm demanded payment of the rent on their house in the amount of four gurushes plus one guruh to the baker for bread. Ümmügülsüm's total alimony was forty gurushes. The former spouses agreed in court that 'Abdu'l-raḥmān would pay Ümmügülsüm the forty gurushes over eight months in five-gurush installments. Given the legal regulations that husbands provide for their wives and children, marriage assured women a certain financial security.

In the event that their husbands were killed during service to the state, the state would be liable to provide women's allowances. If the husband was away, his wife could demand the maintenance fee from the court. The court would generally assign her a fee for the upkeep of the household, which would be credited as a debt to the husband's account. For instance, the case presented in court by a certain Ḥadīce illustrates an instance in which the husband abandoned his wife without providing her maintenance or granting the right to be divorced in the event that he did not return.⁵³ Ḥadīce, who was a resident of the İskender Agha neighborhood, presented her case regarding her husband el-Ḥāc Aḥmed stating that he had previously left for a distant location without arranging for her maintenance. As a result of her complaint, Ḥadīce was granted six paras per day for her maintenance. The amount would be registered as the debt of her husband el-Ḥāc Aḥmed to the state.

As the previous case indicates, women chose to resolve issues such as non-payment of alimony in court since the court acted as an entity that protected their rights. On June 27, 1790, Şerīfe Ḥabībe reported a case regarding her husband Bostānī Ḥasan.⁵⁴

⁵³ *DPM* 2, 41/2 (1 November 1783).

⁵⁴ *DPM* 15, 34/5 (27 June 1790).

A resident of the Kātib Müşliḥüddīn neighborhood in the Aḳsaray district, Şerīfe Ḥabībe was possibly a descendant of the family of the Prophet, which can be deduced from her appellation *şerīfe*. In her testimony, Şerīfe Ḥabībe mentioned that she had given birth to two sons who were the offspring of her husband Bostānī Ḥasan. These two sons, es-Seyyid Yusūf and es-Seyyid Ḥüseyyin, were in the care of their mother for upbringing and nurturing. Şerīfe Ḥabībe demanded the court to obtain funds from her husband for the maintenance of her children. The term *naḫaḳa* in this case designated child support. The maintenance that she demanded was three paras per day for each of her sons, totaling six paras daily. It is interesting that Şerīfe Ḥabībe, who seemed to have a lineage from the Prophet through his grandson Ḥasan ibn ‘Alī, had married a man who did not appear to have the same level of social prestige. Her husband, Bostānī Ḥasan, lacked the honorific title of *seyyid*, the male equivalent of *şerīfe*. However, Şerīfe Ḥabībe’s two sons carried the titles “es-Seyyid”, thereby continuing their mother’s line of pedigree. Although it was common for a descendant to marry another of the same status, that was not the case in this marriage.⁵⁵ Nevertheless, in this instance the children did not gain the honorific *seyyid* from their father; it was the woman who passed the lineage to her offspring.

⁵⁵ According to an imperial edict in the September of 1822, women who were *şerīfe* were forbidden from being married to men who were not “şerīf.” *BOA, HAT* 544/26936, 29 Zilka’ade 1237 (16 September 1822). See Canbakal’s brief explanation of the appellation *seyyid* and the changing perceptions of *nakīb’ül-eşraf* toward the end of the seventeenth century: Canbakal, *Society and Politics in an Ottoman Town*, 62-64; for a more detailed discussion, see Hülya, Canbakal, “The Ottoman state and descendants of the prophet in Anatolia and the Balkans (c. 1500-1700)”, *JESHO*, Vol.52, No.3 2009, 542-578; Dina Rizk Khoury, *State and Provincial Society in the Ottoman Empire: Mosul, 1540-1834* (Cambridge, 1997), 154-55; Minna Rozen, “The Naqib al-ashraf Rebellion in Jerusalem and its Repercussions on the City’s Dhimmis,” *Asian and African Studies* 18, no 3 (1984), 252; Michael Winter, “The Ashraf and Niqabat al-ashraf in Egypt in Ottoman and Modern Times,” *Asian and African Studies*, 19 (1985), 25-27; Hanna Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq* (Princeton, 1982), 9-12, 153-57. A relatively recent study by Rüya Kılıç addresses the problem of the changing role of Seyyids and şerifs as a pseudo-aristocratic body in Ottoman society see Rüya Kılıç, *Osmanlıda Seyyidler ve Şerifler* (Istanbul: Kitap Yayınevi, 2005).

In a separate entry recorded on the same day as the previous case, the same Şerīfe Ḥabībe of the Kātib Müşliḥüddīn neighborhood stated in court that she was pregnant with another child by her husband Bostānī Ḥasan.⁵⁶ She demanded the court to warn her husband to provide her with the necessary allowance of three paras daily until she gave birth and her waiting period was complete. Her husband was not present for the recording of either of these cases in court. The fact that this couple was still married and the wife was demanding marital support for her children through the court for a second time possibly demonstrates her husband's negligence. Also, we could assume that Şerīfe Ḥabībe's presentation of two maintenance pleas in court suggests that her husband was not exasperated that she took legal action regarding the alimony.

Women of *seyyide* and *şerīfe* status were generally married to men of equitable social prestige. This aspect may be seen in the allowance case registered on July 18, 1790.⁵⁷ Şerīfe Ümmügülsüm, daughter of es-Seyyid Mehmed and a resident of the Veled-i Karama neighborhood demanded that the court coerce her husband, es-Seyyid Halil Beşe, son of es-Seyyid Mehmed, to pay the necessary maintenance support for their daughter, Şerīfe 'Āyşe, in the amount of twenty akças per day. The record mentioned that the young girl was still in the care of her mother, Şerīfe Ümmügülsüm. This case is another example of the husband's disregard of his duties within the marital bond. Although still married, the husband of Şerīfe Ümmügülsüm had not fulfilled his fatherly obligation to provide food and clothing for his family. His wife chose to recover the sum that he owed them by taking the case to court. It is also interesting to note that unlike the

⁵⁶ DPM 15, 36/2 (27 June 1790).

⁵⁷ DPM 15, 42/6 (18 July 1790).

marriage of Şerīfe Ḥabībe discussed above, Şerīfe Ümmügülsüm's marriage was in accordance with social etiquette. She was married to a *Seyyid*. Although the honorific could be passed on to the children of a *seyyide* and *şerīfe* female irrespective of her marriage, a union in which both spouses were descendants of the Prophet was more praiseworthy.

A significant issue I observed in the Dāvud Pasha sicil dated 1790 was that women from the same neighborhood chose to register their allowance in court to secure the income coming from their husbands. The case registered by Ümmügülsüm, daughter of Aḥmed, had considerable resemblances to that of Şerīfe Ḥabībe, regarding her husband Meḥmed, son of Muştafā on August 3, 1790.⁵⁸ Ümmügülsüm was a local of the Kātib Müşliḥüddīn neighborhood and she presented her case in the Dāvud Pasha court within a month of the settlement of Şerīfe Ḥabībe's allowance case. Like Şerīfe Ḥabībe, Ümmügülsüm was also pregnant with her husband's child and she was demanding her rightful maintenance support from him. Her husband, Meḥmed, was not present at the time of the entry of this record, and he had appointed Bostānī Aḥmed Agha, son of İbrāhīm, as his proxy. In her testimony, Ümmügülsüm stated that she was pregnant with Meḥmed's child while their marriage was still effective, and that she demanded from him a support fee of ten akças daily until after the birth of their child. Since Ümmügülsüm did not mention any other children it is possible that the spouses were married recently. The similarity between the cases of Şerīfe Ḥabībe and Ümmügülsüm, and the fact that they were from the same neighborhood, may indicate that the two women knew of each

⁵⁸ DPM 15, 49/5 (3 August 1790).

other and could have encouraged Ümmügülsüm to attend the court and demand her rightful allowance.

In the following entry recorded on the same day, the aforementioned Ümmügülsüm reported that her husband, Meḥmed, repudiated her with an irrevocable divorce.⁵⁹ As mentioned in the prior case, she was still pregnant at the time of this divorce, which took place four days prior to the recording of the case. Meḥmed was again represented by his proxy, Bostānī Aḥmed Agha. Ümmügülsüm stated that she absolved her husband from all the responsibilities of the marital union. In both cases, the dower was not mentioned since Ümmügülsüm only demanded alimony for support until the end of her pregnancy, although through repudiation she was entitled to demand the second portion of her dower and more alimony. Even though it was not mentioned in court, the reason she did not demand most of her share may have been because it was she who desired the divorce. In order to obtain funds for the few months of her pregnancy, she probably was persuaded by her husband not to request anything during their divorce.

The allowance and alimony cases of women were not always brought to court by the women themselves. As in other types of lawsuits, women were represented by others when they could not be present in court. The allowance case of Ḥadīce was recorded by her own mother, Rāziye, in court.⁶⁰ Ḥadīce's husband, who also was not present, was represented by a proxy. In her testimony, Rāziye stated that she received two aḳças of the six aḳças of Ḥadīce's child support from the husband of Ḥadīce. She further stated that she was supposed to receive from Ḥadīce a total of twenty-three gurushes by the end of

⁵⁹ *DPM* 15, 50/1 (3 August 1790).

⁶⁰ *DPM* 2, 51/4 (27 December 1782).

November 1783. She stated that she absolved Ḥadīce's husband's proxy, es-Seyyid Ḥüseyin Agha, from paying the rest of the allowance in the amount of seven gurushes. It is possible that Ḥadīce was going to be divorced from her husband and she was being cautious by receiving help from her mother. The fact that her husband was not present in court could be because he left her to travel to another city for work. In any case, Ḥadīce and her mother had become the caretakers of the child. The case demonstrates that although an allowance would legally be due to the wife, she had the option to allocate it to whomever she wished. The fact that Ḥadīce's mother was also to receive money from Ḥadīce might also be because Ḥadīce was in debt. This case demonstrates that women had the option to control their money, even if it was legally due only to them as part of their marital maintenance.

Children, Divorce, and Alimony

The numerous accounts of women being pregnant at the time of their repudiation by their husbands were a common feature of alimony cases in the sicils.⁶¹ Given the pregnant condition of these women during divorce, I surmise that it is probable that most

⁶¹ According to a study of intra muros Istanbul, nuclear families with a small number of children tended to be the norm in 1724: Nejdett Ertuğ, "18. Asır İstanbul Şer'iye Sicillerinde Miras ve Satış Hücetlerindeki Sosyal Nitelikli Verilerin Değerlendirilmesi," *Türk Kültürü İncelemeleri Dergisi* 11 (2004), 16.

of these divorces occurred in the early stages of marriage.⁶² I came to this conclusion also by considering the young age of the children for whom the mothers requested alimony in their registration of these divorces. In 1782, Ni‘metullāh, from the Arabacı Bāyezid neighborhood, presented her case in court to register her repudiation by her husband, Aḥmed Efendi.⁶³ In her statement, Ni‘metullāh claimed that her husband had divorced her with an irrevocable repudiation and that he neglected giving her the deferred dower in the amount of twenty-five gürushes. Ni‘metullāh also registered in this document that she was pregnant with Aḥmed Efendi’s child at the time of the divorce. The court ruled in favor of Ni‘metullāh, requesting the notification of Aḥmed Efendi to pay her the sum. In the subsequent registered case, Ni‘metullāh demanded that the court notify her ex-husband, Aḥmed Efendi, to pay his alimony dues for his unborn child. The court decided that Aḥmed Efendi should be required to pay six paras per day once the child was born.

Another such case is that of Fāṭma, who was divorced with an irrevocable repudiation from her husband, es-Seyyid Maḥmūd, during her pregnancy.⁶⁴ Her only compensation for the repudiation was the ten gürushes deferred dower, which was promised to her at the time of her marriage contract. In this case, Fāṭma requested that the court notify her ex-husband, Maḥmūd, to grant her child-custody dues once the baby was born. The court required Maḥmūd to recompense her four paras per day for the

⁶² Similar cases were discussed in the previous section of this chapter, see *DPM* 15 50/1 (3 August 1790) and *DPM* 15, 36/2 (27 June 1790).

⁶³ *DPM* 2, 16/3 (1782).

⁶⁴ *DPM* 2, 19/6 (1782).

child's care.⁶⁵ A similar testimony was presented by Sā'ide, from the İbrāhīm Çavuş neighborhood. Sā'ide, who was divorced from her husband by an irrevocable repudiation during her pregnancy, was requesting her deferred dower of 1,000 akças.⁶⁶

According to the hanafī doctrine, if a child was born during a woman's waiting period after she was repudiated, or after the death of her husband, the child would be considered his legitimate offspring. This legitimation did not change even if the child was born after the completion of the waiting period in case the couple was divorced by a revocable repudiation. Hanafī law upheld that it was more favorable for children to be under the guardianship (*biḥakkū'l-ḥidāne*) of their mother, or a close female relative, until they reached the age of nine for girls and seven for boys, because women were considered to be more tender and compassionate in terms of child rearing.⁶⁷ In the case of a man deciding to take his child to another location and then repudiate his wife, the habitation of the child would be subject to the mother's countenance. If the mother accepted the child's departure with the father, the father was not obliged to return the

⁶⁵ 'Āyşe, daughter of Süleymān, from the Mimār 'Āsım neighborhood, requested from her previous husband a maintenance allowance for her newly-born daughter, Faṭma, in the amount of four paras per day in *DPM* 2, 20/9 (1782). See other similar cases in *DPM* 2 (1782): 21/5, 21/6, 19/1, 27/5, 31/3, 34/4 and in *AÇM* 206 (1756-57): 3/2, 8/2, 10/3, 66/1, 66/2.

⁶⁶ *DPM* 2, 20/7 (1782).

⁶⁷ Bilmen, II, 470. The case of İsmā'īl Çelebi ibn-i Süleymān demonstrates how single male parents could at times not take the responsibility of taking care of their children in the early stages of life. İsmā'īl Çelebi gives his little daughter Ḥamide (who is present in court) to the care of Ḥāce 'Āyşe bint-i El-Hāc Yusūf and commands 'Āyşe to spend twenty-three paras as part of the child's allowance. It appears from this record that Ḥāce 'Āyşe is not the mother of this child nor is she a close relative of İsmā'īl Çelebi. Although we do not have any information on what happened to the mother of the child, or whether İsmā'īl Çelebi divorced the mother of Ḥamide, it is evident that İsmā'īl Çelebi is not capable of taking care of the child himself. According to hanafī doctrine, it was preferable for children to be raised by female guardians until they reached puberty and could return to living with their fathers or male relatives, in *AÇM* 206, 3/1 (1756-57).

child to the mother upon divorce. However, if the father had taken the child without the mother's consent, he was required to return the child to the mother.⁶⁸

The fetvas relating to the issue of child custody, emphasized the domestic character of a mother's upbringing, stressing the importance of their role until the children are able to eat, drink, and dress by themselves.⁶⁹ The jurists were also strict about protecting the child's best interest in terms of clearly defining the boundaries of the relationship that a father could have with his child while the child was still in the mother's care. Accordingly, if the child had not reached the agreed-upon age of maturity to be given to the father's care, the father was not allowed to take the child to another location without the consent of the mother.⁷⁰ In addition, if the father had taken his wife and child to another town after the birth of the child and he divorced the wife, the mother

⁶⁸ Bilmen, II, 467. For a discussion on child-rearing practices and the treatment of the subject in Ottoman ethics manuals of the sixteenth century, Hatice Toksöz "Osmanlı Klasik Dönem Ahlak Eserlerinde Çocuk Eğitimi," *Osmanlı Dünyasında Çocuk Olmak*, eds. Haşim Şahin, Nurdan Şafak (Istanbul: Dem Yayınları, 2012), 53-95. On the treatment of the negative impacts of divorce on both women and their children as a recurring theme during the period beginning with the Second Constitutional era in 1908, Nesîme Ceyhan, *II. Meşrutiyet Dönemi Türk Hikâyesi (1908-1918)* (Istanbul: Selis Kitaplar, 2009), 207-218.

⁶⁹ In a fetva from *Behçetü'l-Fetavâ* the jurist is asked, "Zeyd demands the return of his child to his custody claiming that he has matured completing seven years of age. Until then, the child has been in the care of his mother, Hind. If Hind denies Zeyd's claim by stating that the child is only six and a half years old, what would be the ruling?" to which he replied that "if the child was mature enough to eat, drink and dress on his own, then he could be given to his father, if not, then he should remain with his mother". According to this fetva, the woman's function in contributing to the upbringing of her child is reduced to her domestic role, fulfilling his basic physical needs such as eating, drinking, and dressing. There is no mention of a woman's input in terms of a child's moral and emotional education in the fetva collection, *Behçetü'l-Fetavâ*, 117.

⁷⁰ "Mes'ele: Hind zevc-i mutlakı Zeyd'den olan sağıre kızı Zeyneb'i bihak'ül-hidane imsak üzere iken sağıre dokuz yaşını tekmiil etmeyip Hind'den hak-ı hidane sakit olmadan Zeyd sağıreyi Hind'in rızasız alıp ahar dokuz yaşına kadır olur mu? *El-Cevap*: Olmaz."/ Trans.: "Question: Hind is the entitled guardian of her little daughter, Zeyneb, who is younger than the age of nine, from Zeyd who divorced her. Would Zeyd be legally allowed to take Zeyneb to another town without the consent of Hind? Response: No, he would not";

"Mes'ele: İstanbul ahalisinden olan Hind'in zevc-i mutlakı Zeyd'den olup hidanesinde olan 'Amr-ı sağır yedi yaşını tekmiil edip istigna hasıl olmakla Zeyd 'Amr'ı Hind'den alıp mütevatın olduğu üzere götürmek murad eylese Hind Zeyd'i bigayr veche şer'en men'e kadır olur mu? *El-Cevap*: Olmaz."/ Trans.: "Question: Would it be permissible for Hind, the former wife of Zeyd from İstanbul, to legally prohibit Zeyd to take their son 'Amr to his hometown after 'Amr reached the age of seven and became independent? Response: No, it would not." *Behçetü'l-Fetavâ*, 117-118.

was free to take her child to the child's birthplace since she was considered to be the primary caretaker.⁷¹ Hence the fetvas make a clear distinction between the roles of the mother as the caretaker and the father as the legal custodian. The use of two different terminologies for the mother and father, who both acted as primary protectors of the children in different stages of their lives, suggests that the mother's role was seen as more essential during the period that the children needed her nurturing physically, while the father's became more imminent since he was designated to take over from the mother and provide the children's later education in life.

In a fetva recorded in the *Behçetü'l-Fetāvā* it is stated that a woman would lose the guardianship of her child if she married another man.⁷² In cases when the mother was remarried to another man after her divorce, the father of the child was not bound by law to pay for the child's maintenance. When repudiated mothers appealed to the court, records show that they were often given permission to request allowance from their child's father. Hence, women actually benefited from being more vocal about their needs even if their circumstances seemed hopeless before taking their case to court. This demonstrates women's awareness of the legal system and the practices of their time. In

⁷¹ This is stated clearly in a fetva by Yeñişehirli 'Abdullāh Efendi: "*Mes'ele*: Zeyd bir belde ahalisinden Hind'i ol belde de tezcic edip Hind'den kızı Zeyneb tevleid ettikten sonra Zeyd, Hind ve Zeyneb'i belde-yi uhraya götürüp anda tatlik eylese sağirenin hak hidanesi Hind'in olmakla Hind sağireyi alıp belde-yi evvelaya götürüp anda bihak'ül-hidane imsaka kadire olur mu? *El-cevap*: Olur." / Trans.: "*Question*: If Zeyd marries Hind in a certain town and after the birth of their daughter, Zeyneb, he takes both of them to another town and divorces Hind, given that the entitled guardian of the little child is Hind, would it be lawful for Hind to take Zeyneb to the previous town and raise her there? *Response*: Yes, it would." Ibid, 118.

⁷² "Hind zevc-i mutlakı Zeyd'den olup iki yaşında olan sağire kızı Zeyneb'i bihak'ül-hidane imsak üzere iken nefsini sağireye ecnebi olan Bekir'e tezcic edip sağirenin nisvandan hadine-yi ihrası olmamakla Zeyd sağireyi Hind'den alıp kendi beldesine götürmek murad eylese Hind Bekir'in taht-ı nikāhında iken Zeyd'i men'e kadire olur mu? *El-cevap*: Olmaz." / Trans.: "*Question*: Hind has a two-year old daughter, Zeyneb, from her previous marriage to Zeyd. Hind married a stranger, Bekir, while her daughter was still in her care, and Zeyneb was left without a female caretaker. Would Hind be able to prohibit Zeyd from taking his daughter to his hometown, while Hind is still the wife of Bekir? *Response*: No, she would not." Ibid, 118.

the Dāvud Pasha sicil dated 1782, 82 % of the cases regarding repudiation involved the custody of and allowance for children.

In the occurrence of divorce—in particular when initiated by women—the custody and care of a child was the mother’s responsibility until the child reached puberty, which was defined differently for each gender. For a girl, the age for care (*hiḍāne*) was prescribed to be nine to eleven; for a boy it was seven to nine.⁷³ I offer a likely reading that this distinction signified the established gender distinctions and roles in this particular society. Hence, considering that the norm was to give the male children to the care of their father much earlier than the female children, it was possibly deemed more appropriate that boys spent more of their early childhood and teenage years having an exemplary father figure. However, the sources indicate that this norm was not absolute, and that women made use of the flexibilities by adhering to strategies to manipulate the already accommodating norms. The case presented in court by Ḥadīce from the el-Ḥāc Evḥād’ed-dīn neighborhood is one such example.⁷⁴ The aforementioned Ḥadīce was previously married and divorced from the *şeyh* of the el-Ḥāc Evḥād’ed-dīn

⁷³ Bilmen explains that the period of a woman’s caretaking of a child depends on whether that child is male or female. If a woman were designated to be the primary caretaker (*hiḍāne*) of a male child, the boy would remain in her care until he was able to eat/drink and wash on his own. Once he was able to perform these actions alone, usually between seven and nine years of age, he would be redirected to his legal custodian, the father. For female children, this period was defined as the beginning of her menstrual period or once she started experiencing certain womanly desires (*müşteḥāt*). The age at which a girl was considered to be an adult was usually between nine to eleven years of age. Bilmen’s description of the difference between the genders in transitioning from the care of the mother to that of the father reflects his modern perspective on patriarchal gender roles. In his rationalization, Bilmen suggests that once male children were able to take care of their own basic necessities, they would require a male custodian’s instruction in their educational/intellectual upbringing. Hence, he stresses that such a thorough cultivation of a boy could only be provided by his father or a male relative. However, a female child upon reaching puberty did not essentially require training in the fields listed above since their main interest was to gain experience in household practices specific to women (such as domestic chores) and womanly etiquette, which could only be provided to them by their mothers. It was only upon reaching puberty that girls would require the custody of their father or grandfather for protection from the public realm. See Bilmen, II, 463.

⁷⁴ DPM 2, 25/3 (1782).

Tekke es-Seyyid Mehmed Celāl'ed-dīn Efendi, son of es-Seyyid eş-Şeyh Abdülkerim Efendi. The couple had a daughter from this marriage named Şerīfe 'Alīye. Hādīce stated in court that she received from Mehmed Celāl'ed-dīn Efendi a total of 273 gurushes for the care of her daughter Şerīfe 'Alīye. When Şerīfe 'Alīye was nine years of age, Hādīce released Mehmed Celāl'ed-dīn Efendi from the obligation of paying for her allowance. The record did not mention whether Şerīfe 'Alīye continued to live with her mother or her father.

A similar case was presented in court by another Hādīce, of the Eski 'Alī Pasha neighborhood.⁷⁵ In her statement, Hādīce claimed that her husband, el-Hāc Muştafā, had divorced her by an irrevocable repudiation, eight days prior to the recording of the case. Hādīce's husband was not present in court at the time of her statement; therefore, he was represented by a proxy, Yusūf Agha. Hādīce stated that she requested only twenty gurushes of her dower of fifty gurushes and an additional sum of five gurushes in lieu of her alimony and waiting period maintenance. Despite this being a repudiation settlement, there must have been a plausible reason for Hādīce to give up the rest of her dower in the amount of thirty gurushes. Hādīce also stated that she had a nine year-old daughter Fāṭma from her marriage to el-Hāc Muştafā. Hādīce concluded her account by stating that el-Hāc Muştafā had agreed to leave their daughter in her care as a result of their settlement. Consequently, Hādīce was granted complete responsibility for the upbringing and financial burden of nurturing her daughter Fāṭma, without the expectation of any help from the child's father. The structure of this court entry strongly suggests that Hādīce

⁷⁵ DPM 25, 8/1 (1795).

conceded to receiving only half the amount of her dower since her husband had proposed an arrangement whereby she would have full custody of her daughter.

Given the economic setback experienced by women after divorce, it was not always possible for them to care for their children. The case presented in court by Ümmühān regarding the custody of her daughter, Havvā, demonstrates the difficulties borne by women who were primary guardians of their children.⁷⁶ Ümmühān, who was originally from the Anatolian city of Konyā and now resided in the Topḥāne district's Yeni Maḥalle neighborhood, decided to give her little daughter Havvā over to the care of el-Ḥāc 'Alī and his wife Ruḳiye. Perhaps this couple decided to take care of Havvā because they did not have any children. Ümmühān requested that the couple pay ten akças daily as the maintenance for Havvā. It is possible that the mother registered the matter in court to officially certify that the couple would return her child once Ümmühān was capable of providing for Havvā's maintenance. The lack of any mention in the record of Havvā's father indicates that Ümmühān was a single mother and probably Havvā's only custodian. Since she could not financially provide for Havvā, Ümmühān had chosen to hand her over to another married couple who could afford her maintenance. The economic difficulties faced by Ümmühān were probably less excruciating than the pain she must have felt in relinquishing her daughter.

In relation to child custody, Ottoman officials prioritized the wellbeing and healthy upbringing of the child. Nāile, from the Veled-i Karabaş neighborhood, presented her case in court regarding her former husband Meḥmed Beşe.⁷⁷ In her

⁷⁶ AÇM 206, 60/4 (1757).

⁷⁷ DPM 2, 18/1 (1782).

testimony, Nāile claimed that she and her former husband had a two-year-old son named Muştafā who had been previously in her care. The little child was taken from Naile by his father when she married another man, but Muştafā wanted to continue living with his mother. Consequently, the court decided that Muştafā would be cared for by his mother Nāile until he was seven years old.

The case of Ḥanīfe, an inhabitant of the Aydın Kethüdā neighborhood who appointed her husband Ḥalīl Agha as her proxy in court regarding the maintenance allowance of her five-year-old daughter, Emīne, demonstrates that a mother could remain as her children's guardian even after her remarriage to another man.⁷⁸ The aforementioned Emīne was born from the previous marriage of Ḥanīfe to Alemdār Meḥmed, who was not present in court. It is interesting to note that in this alimony case the second husband of Emīne acted as her proxy in order to obtain Emīne's allowance from Ḥanīfe's first husband. The court indirectly ruled in favor of Ḥanīfe, by compensating her daughter Emīne with four paras per day for her daily necessities. The sum would be the responsibility of Emīne's father. In hanafī discourse, if a mother was appointed as the official caretaker of a child after a divorce, she would lose supervision over the child upon her remarriage.⁷⁹ However, the cases I encountered indicate that, in some instances at least, women could continue being the sole guardian of their children

⁷⁸ DPM 2, 25/2 (1782).

⁷⁹ According to hanafī discourse, the children were supposed to remain with their father after they completed their respective time with the mother or female caretaker. The Shafi'i school, however, bestowed on children the choice of living with the parent they preferred. The choice of habitation also differed according to the gender of the child. If a girl desired to reside with her mother, she was free to remain with her indefinitely. On the other hand, if she chose to live with her father and decided not to see her mother, she could have her mother banned from visiting her. For male children, the rule was slightly different. If the boy chose to live with his mother, he could only spend the nights with her because he was obligated to stay with his father during the daytime, Bilmen, II, 465; Aydın, *İslam-Osmanlı Aile Hukuku*, 54.

even after remarriage. The dispute presented in İstanbul Bāb court by a certain Ḥanīfe regarding the right to remain as guardian of her two daughters, ‘Āyşe and Emīne, against her previous husband Meḥmed’s will, is one of many examples in the records.⁸⁰ Ḥanīfe, the mother of two daughters from her previous husband Meḥmed, was their primary caretaker. In court, she stated that she was remarried to a man who was a “stranger” to her daughters. Ḥanīfe demanded that the court give her full authority to continue taking care of her daughters regardless of her remarriage, adding that she would absolve her previous husband Meḥmed from paying child maintenance dues. The court ruled in favor of Ḥanīfe, assigning her as primary custodian of her children and releasing Meḥmed from the requirement of paying a monthly allowance for the upkeep of his children. Consequently, Ḥanīfe’s remarriage did not affect the guardianship of her children. Ḥanīfe could probably afford to absolve Meḥmed from paying his children’s maintenance due to her remarriage. Although we are not given further information concerning Ḥanīfe’s second husband, it is probable that he provided the funding for the children’s support.

The case brought to the Aḥī Çelebi court by Ruḳiye, daughter of ‘Abdullāh, about the custody of and allowance for her daughter’s son, concerns the issues of remarriage and child custody. In her claim, Ruḳiye stated that her daughter, Ḥadīce, daughter of ‘Osmān, who had a son from her previous marriage to Ḥasan ibn-i el-Ḥāc Meḥmed, had remarried another man. Upon Ḥadīce’s remarriage, her son was left without any maintenance and support since his father Ḥasan stopped paying the sum. As the grandmother and primary caretaker of the young İsmā‘īl, Ruḳiye requested that the court

⁸⁰ *İBM* 209, 15/6 (1755-57).

advise Hasan to pay the maintenance fee for his own child. Since the previous husband refused to continue paying an allowance to his child upon the remarriage of Hādīce, Ruḳiye had taken on the role of primary custodian of İsmā‘īl so the father would continue paying the allowance. This was an interesting maneuver by the two women in order to remain eligible to receive child support.⁸¹

As evident from these records, in late-eighteenth-century Istanbul, it was not impossible for women to continue being the primary caretaker of their children regardless of their remarriage to another man. The legal texts’ characterization of women as maternal figures indicates that they were given absolute authority in child-rearing. Until a child attained a certain age, women assumed full responsibility for their care and education. As they appear in the sicils, Ottoman legal authorities recognized the crucial role mothers, or female guardians, played in rearing children and were supportive of them in cases where fathers tried to undermine the mothers’ command.

A Comparative Perspective

When assessing the status of married women and their rights to own property in Istanbul, a brief examination of the conditions in Europe provides a comparative perspective. Given that there was no uniform set of rules that deliberately governed

⁸¹ AÇM 206, 6/6 (1756-57).

family relations across the European continent at any time during this period, England's legal unity allows a feasible comparison with Ottoman family law. Unlike the standard practice in eighteenth-century Europe, women in late-eighteenth-century Ottoman Istanbul continued to own their personal property within marriage. During the same period in Europe, according to English common law in particular, *coverture*⁸² enabled the vestment of women's property to their husbands through marriage. The doctrine of unity assumed that the marital relationship formed a single legal person from a husband and wife. Empirically, the union of the spouses denoted their consolidation into the personhood of the man. The doctrine was rooted in a highly patriarchal principle that envisaged the absolute control and protection of the wife by the husband. Hence, a woman's legal and economic identity was completely expunged through matrimony.

The property previously owned by the wife was not reckoned to be the conjugal pair's shared possession, but it was regarded as solely the husband's estate. In the English system, coverture could only be avoided by obtaining the husband's consent in a pre-nuptial contract allowing him to grant entitlement to his wife to keep a certain amount of property in her own name and dispose of it by will. Though not many women could make use of it due to their circumstances, this was the only method through which

⁸² Sir William Blackstone discussed the term thoroughly in his *Commentaries*: "By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection and cover, she performs everything; and is therefore called in our law-French a *feme-covert*, *fæmina viro co-operta*; is said to be *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*," Sir William Blackstone, *Commentaries on the laws of England: Book the first*. By William Blackstone, Esq. Vinerian Professor of Law, and solicitor general to her Majesty (Oxford: Clarendon Press, 1766), 442.

women in England maintained ownership of their movable assets until the Married Women's Property Act was established in 1882.⁸³

In his essay on European family law, Lloyd Bonfield traces the alterations made in the field of family law in England in the late-eighteenth- and early-nineteenth-century, while he comprehensively analyzes the prominent and relatively static conditions within the continent at large.⁸⁴ In his assessment of attitudes toward the law, Bonfield emphasizes that legal positivism had triumphed over natural law leading to a diversification of the legal order, especially in terms of family law. As a subset of law profoundly relying on local tradition, family law was contested and reformed in the late-eighteenth and early-nineteenth centuries.⁸⁵ John Stuart Mill (1806-1873), one of the great thinkers of the nineteenth century, argued for the equality of spouses in marriage. In his renowned essay of 1869, "On Liberty and the Subjection of Women," Mill suggested that the role of women in marriage needed to be changed.⁸⁶ He held that women's subjugation in the marital union impeded society's progress to a great extent. Mill regarded marriage as an equal partnership instead of the legal subordination of one sex to the other and wished to further his assertion by enactment of laws enhancing the position of women in marriage.⁸⁷ In 1857 judicial divorce was accepted in England. It is,

⁸³ Amy Louise Erickson, "Possession—and the Other One-Tenth of the Law: Assessing Women's Ownership and Economic Roles in Early Modern England," *Women's History Review* 16, No. 3 (July 2007), 370.

⁸⁴ Lloyd Bonfield, "European Family Law," eds. David I. Kertzer and Marzio Barbagli, *The History of the European Family II: Family Life in the Long Nineteenth Century, 1789-1913* (New Haven and London: Yale University Press, 2002), 109-154.

⁸⁵ *Ibid.*, 109.

⁸⁶ John Stuart Mill, *On Liberty and The Subjection of Women* (New York: H. Holt, 1895).

⁸⁷ Bonfield, 111.

therefore, only around the middle of the nineteenth century that the time-honored theory of unity of person was beginning to be transformed owing to a consensus of views on property, which was acknowledged to be protecting married women against the prying of their husbands in equity courts. Circumstances were different for Ottoman women of Istanbul as they had been for centuries, and the court records show that women's right to property ownership was recognized and protected against their husbands and the families of their husbands. In England, the separateness of property could only be determined before marriage by contract. It was only through the creation of trusts—as early as in the sixteenth century—that married women could seize property without their husbands' interference.⁸⁸

Even though common law deemed husband and wife to be a single person, there were instances when the wife was considered to be an individual. Since the wife was regarded as inferior to her husband, she was allowed to act solely by his consent. All legal rights, duties, and disabilities acquired by marriage depended on the legal construct of *coverture*. In his *Commentaries*, Sir William Blackstone, the important late-eighteenth-century English jurist and professor of law, defined the scope of coverture as encompassing issues related to property, personal relations, contracts, and other legal matters.⁸⁹ According to the regulations of coverture, a husband could not give his wife anything since this would presume her independent personhood. A man could assign his wife to be his agent and bequeath to her in his will, but both actions could only take effect after he passed away. In terms of his financial responsibilities within marriage, a husband

⁸⁸ Bonfield, 112.

⁸⁹ Blackstone, 442-78.

was bound by law to take care of his wife. Hence, through marriage he was liable for the deals she contracted and the debts she acquired both prior to and during the marriage—through marriage “he has adopted her and her circumstances together”.⁹⁰ The husband’s liability could be revoked only in the event of a pre-marital contract or if the wife eloped or began to live with another man. In those cases, the husband would no longer be bound to provide for his wife’s needs and pay her debts. If the wife owned separate property, she was obliged to support her husband if he became indebted to the community.⁹¹ Blackstone lists the instances in which a wife was allowed to sue or be sued as a *feme sole*: if the husband banished her or if he was dead; if the wife obtained judicial separation from him; or if she sued her husband regarding the earnings, money or property which was her separate property either by contract prior to the nuptials or under certain statutes of the common law.⁹² The only exception to coverture was criminal prosecution. If the wife committed a criminal act such as manslaughter, the law would punish her separately. In such an instance she would be deemed as an individual within marriage.

Since property is the category that concerns us, I will describe only how it was handled within England prior to the enactment of the Matrimonial Causes Act and the adoption of the two Married Women’s Property Acts during the latter half of the nineteenth century.⁹³ Bonfield argues, summarizing the state of research in that field, that

⁹⁰ Ibid, 443.

⁹¹ Ibid, 444.

⁹² Ibid.

⁹³ Bonfield, 122-24. In The Married Women’s Property Act of 1870, reformers were divided over demanding equality between spouses in a marriage and mandating separate legal status for wives. The dominant

the unity of person of the spouses was slowly being transformed through property settlement with the recognition and protection of married women in equity courts against the meddling of their husbands.⁹⁴ Marriage was one of the primary modes by which men procured property in goods and moveable possessions. Whatever previously belonged to the woman was passed to the man through marriage with the same degree of ownership rights. In terms of real property owned by women, husbands controlled the rental and profit rights throughout their lifetimes. If a wife survived her husband, she was allowed to own the real property and even bequeath it to her heirs after her death. In the case of moveable property, the husband remained sole possessor of the entirety of the goods. Again, the wife had the right to recover her prior position of entitlement of these goods after the passing of her husband, provided that he did not procure them himself by law. If so, the wife would lose all rights over that property. The law treated the ownership of the two kinds of property in the same manner in the event that the husband passed away before the wife. However, the regulation differed greatly if the wife was the first to die. Upon the wife's death, moveable property was remanded to her surviving husband, but he could not assume ownership of immoveable property since he never actually possessed it.

economic concerns did not allow for overturning coverture, the Act permitted women to control their earnings and modest legacies. The Act's primary focus was protecting vulnerable women from exploitation by their husbands rather than creating equity between spouses. A second bill was introduced in 1882 demanding that married women be granted feme sole status regarding property ownership and legal capacity to make contracts, sue, and be sued. However, the Married Women's Property Act of 1882 continued the legal construct of 'unity of person'.

⁹⁴ The statement by Blackstone is representative of his conservative views regarding the position of women: "Even during the Middle Ages, there is some evidence of married women engaging in economic activities independently of their husbands, and even appearing in court to sue or be sued in their own name. Married women were also able to achieve autonomy with respect to their 'separate property,' land or personality placed in trust which the Court of Chancery would protect from intermeddling by husbands. In the course of the later sixteenth and seventeenth centuries, it became more common in England for settlements to be executed prior to marriage to allow married women to hold property separate from their husbands. The practical effect of such agreements was to circumvent the 'unity of person' legal concept, at least so far as specific property was concerned," Bonfield, 122.

In these cases, moveable property refers to money, jewelry, and household goods that the wife brought into the marriage. These items immediately became the husband's possessions.

The famous words of Sir Blackstone, "so great a favourite is the female sex of the laws of England,"⁹⁵ were uttered with the conviction that these laws in fact protected women and helped to bring out the best in them by putting them under the ultimate care of their husbands. A husband not only seized a wife's economic assets but he also defined her legal status and independence. It seems that women in England theoretically had the right to own property and could be economically active as long as they were not married. Once a woman entered the marital union, under *coverture* she no longer had the opportunity to practice ownership since she ceased to have individual status in the eyes of the law. It was not so uncommon for women to practice ownership of her possessions and inheritance only upon becoming a widow.

One of the most basic differences in Ottoman legal thought and practice was that marriage did not impose a doctrine of unity of person. The wife was legally considered to be a separate person and the marital bond did not signify a single judicial person. When getting married, a woman brought into the marriage property from her patriarchal household in the forms of land, shops, estate, money, jewelry, or other possessions. This property could have been granted to the new bride as part of her dowry, as part of her inheritance share, or as a marital gift. Married women were free to handle their own property and make economic decisions separately from their husbands. Anything that a woman brought into her nuptial household would still be considered her own property

⁹⁵ Blackstone, 445.

unless she registered part of that property in her husband's name. Unlike the situation in England, spouses were not considered to be a single person in law, and they certainly were not regarded as a unit in their economic and financial activity. In Istanbul, it can be assessed from the court records that women's right to property ownership was both recognized and protected against their husbands as well as the families of their husbands.

Women and Property Ownership

Women who inherited shops from their fathers or husband continued their direct involvement in the trade, rented out the shop or the tools, or commissioned someone else to take over the shop. In her study of late-fifteenth-century Bursa market relations and urban production, İklil Selçuk observed that women were actively engaged in both ends of the production process, that is, by being involved in weaving as laborers and as dynamic agents in trading the manufactured goods.⁹⁶ In her assessment of women's agency in the labor force, Selçuk points out that when women could not personally run

⁹⁶ İklil Oya Selçuk, "State and Society in the Market Place: A Study of Late Fifteenth-Century Bursa," (Ph.D. dissertation, Harvard University, 2009), 145. For a wider discussion of women's activity and engagement in urban production see Gerber's seminal article, "Social and Economic Position of Women," 231-244; for a critical review of the historiography of women's control of material and immaterial sources see Faroqhi, *Stories of Ottoman Men and Women*, 133-199; see also Zarinebaf-Shahr, "The Role of Women in the Urban Economy of Istanbul," 141-152; For household production in Bursa involving women and slaves, see Sahillioğlu, "Slaves in the Social and Economic Life of Bursa," 43-112.

the businesses they inherited, they managed them from afar by appointing proxies.⁹⁷

Although one of the major ways in which women became visible in the sicils was through renting out the shops they inherited (such as bakeries, tanneries, spinners' workshops), their involvement in the urban economy was not limited to leasing.⁹⁸ Women who were not proficient in a craft often chose to sell the ownership rights to the shops, as well as consign their property as collateral for taking credit from money lenders.⁹⁹ The lack of evidence regarding women's activity in the marketplace in seventeenth- and eighteenth-century Istanbul has been explained to be due to their working, if guild monopolies so required, from home as part of a wider network associated with 'the putting-out system.'¹⁰⁰ In court records, women also emerge as investors in real estate. From the frequency of cases related to women's selling and buying shares in both commercial and

⁹⁷ Selçuk, 145. The author further states that in fifteenth-century Bursa, there is indication of the existence of wage workers and a "union" that resembles putting-out activity, primarily in the manufacture of silk products. Selçuk bases this argument on her observation that hired workers— especially widows lacking the proper means to set up their own shops—could operate in the countryside and in the town. In her assessment of the engagement of urban women in business transactions, Fariba Zarinebaf-Shahr observes that "middle- and lower-class urban and rural women worked as wage earners in the cottage industry within the extended household. Middle- and upper-class women invested in the marketplace directly or by appointing their male kin as their proxies in business transactions and contracts. This explains the relative absence of women in the registration of commercial and guild affairs in Islamic court records," in "The Role of Women," 142. See also Haim Gerber, "Social and Economic Position of Women...", and Abraham Marcus, *The Middle East on the Eve of Modernity*.

⁹⁸ In her assessment of women's activity in the marketplace, Madeline C. Zilfi mentions the range of professions in which women worked as part of the production process regardless of societal disapproval: "women did break out of the circle of *mahrem* intimates with varying degrees of family consent. Conservatives' strictures on women venturing outside were generally more a matter of preference than of law. They were, in any case, premised on an unrealistic, even bourgeois, imaginary in which static families stood on rock-solid foundations of male bounty. Many women at some stage of their lives relied all or in part on their own labor...those who made a living as laundresses, bathhouse attendants and proprietors, clothing finishers and piecework employess, cooks, servants or wet nurses, and women who had ill, disabled, underemployed, or absent male protectors had a different perspective about the need to be outside" Zilfi, *Women and Slavery in the Late Ottoman Empire*, 56.

⁹⁹ Zarinebaf-Shahr, 145-6.

¹⁰⁰ "Women participated in the textile industry of Bursa, Ankara, and Istanbul as weavers, dyers, and embroiderers. Their labor, however, remained marginal compared to artisanal production through the guilds," Ibid, 142.

residential real estate, it could be deduced that they were active participants in this challenging arena for women.¹⁰¹ Besides the well-functioning moneylending system, many middle- and upper-middle class women were able to secure ownership of shares in property through charitable foundations. The estate inventories of 257 women belonging to military-bureaucratic elite households in seventeenth-century Istanbul consisted of unmovable property such as houses, shops, bakeries (23.15%), cash (15.58%), household goods (15.46%), jewelry (15.3%), clothing (13.2%), loans and dower (8.1%) among other goods and capital.¹⁰² The fact that Zarinebaf-Shahr determined that women were investors and managers of about seventy-three hammams that were charitable endowments in Istanbul in 1765¹⁰³ emphasizes women as owners of work premises and managers of marketable assets in an urban setting.

In mid-February of 1806, a certain Pāçacı Molla Ḥalīl, who was a resident of the İbrāhīm Pasha neighborhood near Silivriḳāpı, declared his testimony in court regarding his wife Fāṭma.¹⁰⁴ He said: “I borrowed from my aforementioned wife a total of 300 gurushes which I still owe to her. Having been a trotter-soup shopkeeper, I own the items listed below, which are extant in the trotter’s shop (*paçahāne*), namely, a cauldron, two soup ladles, two trays, and other necessary tools. I hereby grant the entirety of my possessions to my wife, Fāṭma, as recompense of my debt.” Since the debt of Pāçacı

¹⁰¹ For a detailed discussion of women’s ownership and management of real estate property, see Marcus, “Men, Women and Property: Dealers in Real Estate in Eighteenth-Century Aleppo,” *JESHO* 26, No. 2 (1983), 137-163; see also Leila Hudson, “Investing by Women, or Investing in Women? Merchandise, Money, Marriage and the Formation of a Pre-National Bourgeoisie in Damascus,” *Comparative Studies of South Asia, Africa and the Middle-East*, 26/1 (2006), 105–120.

¹⁰² Zarinebaf-Shahr, 148.

¹⁰³ Ibid, 149.

¹⁰⁴ *DPM* 47, 1/1 (1806).

Molla Ḥalīl was more than the amount covered by the mentioned list, he decided to add property consisting of four part-shares in the trotter-soup shop located in the İbrāhīm Pasha neighborhood. Hence, the combined value of his shares of the tools and the shop was 300 gurushes, which he transferred to his wife Fāṭma. She willingly accepted the shares as compensation for her husband's debt.

This particular record presents a significant issue for discussion. The fact that the wife and husband kept their finances separate from each other is the main point that will be discussed in more detail in this chapter. What is essential to note is that Molla Ḥalīl easily could have chosen to sell his shares to another man in his craft or to other shareholders of the shop, in which case he would have been able to pay his wife Fāṭma in cash. Instead, he transferred the shop's shares and the tools to her, which enables us to deduce that it was common for women to become shareholders or proprietors of commercial realty. Whether Fāṭma managed the shop herself or rented it out to be operated by others is not evident in this case. However, her assumption of the role of owner of the trotter shop is a considerable example of women's active role in the field of profit-making assets. In this manner, Molla Ḥalīl also secured the ownership of the trotter shop within the family.

The court records and estate registers inform that women of certain wealth usually owned a house or shares to a dwelling, jewelry, valuables such as gold and silver, decorative household items, textiles, clothing, and slaves who helped with household chores. Apart from these, women's wealth also consisted of cash. In the eighteenth century, women of middle- and upper-middle classes were engaged in moneylending. Women also chose to actively engage in moneylending in order to make a profit out of

the cash they obtained either by selling realty or by the dower vested to them through their husbands.

The case of Ḥadīce is an example of the ways in which women chose to put their money to profitable use.¹⁰⁵ On July 17, 1783, Ḥadīce presented her case regarding Fāṭma in the Dāvud Pasha court. At the time of Ḥadīce's statement, both Fāṭma and her mother, Ferecullāh were also present in court. In her testimony, Ḥadīce stated, "On the last day of April of this year, the aforementioned Fāṭma borrowed from me by means of a loan agreement 160 gurushes. As collateral, Fāṭma and her mother Ferecullāh, have presented a house that is under their disposition. The house, located in the Arabacı Bāyezīd neighborhood, belongs to the Şerīf el-Ḥāc Muştafā Efendi endowment." After stating that she accepted the house¹⁰⁶ as a recompense for Fāṭma's debt, Ḥadīce went on to describe the situation regarding the loan: "I accepted Fāṭma's offer with the assurance that she would pay me four gurushes per month for the rent of the house. Of the 160 gurushes she owes me, I have so far received from Fāṭma only sixteen gurushes and thirty-two paras for the duration of seven months and six days leading up to the writing of this record. I know that Fāṭma has accumulated a total sum of thirty thirty gurushes and five paras from the rent of the house. I now demand from Fāṭma what is left of her initial debt of one hundred gurushes and the rest of the rental sum of thirteen gurushes and thirteen paras, which add up to a total of 113 gurushes and thirteen paras." When Fāṭma was interrogated about the matter, she claimed that she had only taken 138 gurushes, not 160 gurushes, from Ḥadīce as a loan. Fāṭma further went on to claim that in addition to

¹⁰⁵ DPM 2, 74/11 (1781-4).

¹⁰⁶ Here the house is described as a *musakḳafāt*, a term used for buildings as distinguished from the ground they stand on; a house-property, which the tenants must keep in good repair.

the sixty gurushes, she owed her the seventy-eight gurushes as well as the thirteen gurushes thirteen paras that was the remainder of the aforementioned sum. Fāṭma explained that the total of her debt to Ḥadīce was in fact ninety-seven gurushes, refusing to pay the twenty-two gurushes since she denied that she had originally borrowed that sum from Ḥadīce. When interrogated, Ḥadīce was unable to provide evidence for her claim. The court decided that Fāṭma should pay Ḥadīce only the ninety-seven gurushes and thirteen paras. Fāṭma and Ferecullāh were advised to temporarily let go of the trusteeship and grant it to Ḥadīce. Each woman was advised to reach an agreement based on the decisions put forth by the court.

This is a rather complicated case given that the two parties were involved with each other on many different levels. Ḥadīce, who seems to have been a woman of independent wealth, was probably the only person Fāṭma could go to when she was short of funds. The reasons why she asked Ḥadīce for a loan are not mentioned in the document. Given that Fāṭma was not married and was probably a widower or a divorcee, her need for money is understandable. The fact that Fāṭma did not need her mother to represent her in court reveals that she was not a minor. In fact that Fāṭma and her mother Ferecullāh were both present in court probably because the house was under their joint disposition. Perhaps her husband had recently repudiated her. Although it is not possible to know why Ḥadīce, the moneylender, decided to state a higher amount than Fāṭma's original debt, the fact that they were involved in a lending/borrowing relationship points to women's familiarity and experience with matters related to their finances. Hence, regardless of their financial prosperity, both women were capable of taking care of their own assets. The third woman in this story, Ferecullāh, Fāṭma's mother, was possibly part

of this arbitration because she owned half the shares of the endowment house along with her daughter. It could be speculated that given that they had a share in the endowment of Şerîf el-Hâc Muştafâ Efendi might indicate that both Fâtma and her mother were the manumitted slaves of Muştafâ Efendi. Well-to-do women as well as men of Istanbul transformed houses into endowments in the early-sixteenth century, in order to guarantee that their freed slave women acquired a place to live.¹⁰⁷ The fact that Fâtma and Ferecullâh were beneficiaries of the house's endowment could be related to such a practice. Another major inquiry is how women used moneylending as a method of increasing their income.¹⁰⁸ Since it was difficult for a married woman to find a job

¹⁰⁷ Faroqhi, 141. This was not the only reason for the creation of waqfs—there were many other reasons why women established waqfs, or their relatives established waqfs for the protection of the women of the family or descendants of the family in general. These family waqfs increased in number in the eighteenth century. On the issue of family waqfs see Bahaeddin Yediyıldız, *XVIII. Yüzyılda Türkiye'de Vakıf Müessesesi: Bir Sosyal Tarih İncelemesi* (Ankara: Türk Tarih Kurumu, 2003); Richard van Leeuwen, *Waqfs And Urban Structures: The Case of Ottoman Damascus* (Leiden, Boston: Brill, 1999); Randi Deguilhem, "Consciousness Of Self: The Muslim Woman As Creator And Manager of Waqf Foundations in Late Ottoman Damascus," *Beyond The Exotic: Women's Histories In Islamic Societies*, ed. Amira El-Azhary Sonbol (Syracuse, New York: Syracuse University Press, 2005), 102-119; Gabriel Baer, "Women and Waqf: An Analysis of the Istanbul Tahrir of 1546," *JAAS* 17 (1983): 9-27; Beshara Doumani, "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860," *Comparative Studies in Society and History* 40 (1998): 3-41, esp. 29; Abdul-Karim Rafeq, "The Application of Islamic Law in the Ottoman Courts in Damascus: The Case of the Rental of *Waqf* Land," 411-427, and Stefan Knost, "The *Waqf* in Court: Lawsuits over Religious Endowments in Ottoman Aleppo," in *Dispensing Justice in Islam*, 427-451.

¹⁰⁸ Faroqhi suggests it could be assumed that some of the money women obtained from selling their real property was later invested in loans, *Ibid*, 152. There is ample scholarship on women's ownership and management of property: Marcus, "Men, Women, and Property," 137-163, esp. 146-147; Iris Agmon, "Women, Class, and Gender: Muslim Jaffa and Haifa at the Turn of the 20th Century," *IJMES* 30 (1998): 477-500; Ruth Roded, "Quantitative Analysis of *Waqf* Endowment Deeds: A Pilot Project," *JOH* 9 (1989): 51-76, esp. 67-70 and "The *Waqf* and the Social Elite of Aleppo in the Eighteenth and Nineteenth Centuries," *Turcica* 20 (1988): 71-91; Margaret L. Meriwether, "Women and Economic Change in Nineteenth-Century Syria: The Case of Aleppo," *Arab Women, Old Boundaries, New Frontiers*, ed. Judith E. Tucker (Bloomington: Indiana University Press, 1993), 65-83; Mary Ann Fay, "Women and Waqf: Toward a Reconsideration of Women's Place in the Mamluk's Household," *IJMES* 29 (1997): 33-51; Miriam Hoexter, *Endowments, Rulers, and Community: Waqf al-Haramayn in Ottoman Algiers*, 134 and 162; Murat Çızakça, "Changing Values and the Contribution of Cash Endowments (*awqaf al-nuqud*) to the Social Life in Bursa, 1585-1823," *Le waqf dans le monde musulman contemporain (XIXe-XXe siècles)*, ed. Faruk Biliçi (Istanbul: Français d'Etudes Anatoliennes, 1994), 61-70.

outside of the household, moneylending and providing loans had become a system through which women could exercise autonomy in managing their finances and property.

In the sicils examined, there were many cases regarding property exchange among spouses. A case of property sharing and exchange between husband and wife is registered in court by es-Seyyid Muştafâ, son of es-Seyyid Mehmed, originally from the small coastal village of Armudlu near Gemlik to the south of Istanbul.¹⁰⁹ In his testimony, es-Seyyid Muştafâ, who now resided in the Dāvud Pasha neighborhood of Istanbul, stated that he sold half of the shares to his house to his wife Fâtma, daughter of Muştafâ, on June 19, 1790. It consisted of one room and an antechamber on the upper level and one room and a courtyard on the ground level. In his testimony, es-Seyyid Muştafâ stated that he sold half the shares for a total of forty gürushes. The spouses mentioned in this record were still married and not divorced. The husband was seemingly selling the shares to his wife instead of simply granting them to her. For the proprietorship of half of the shares, he received forty gürushes, which was considered to be a sizeable sum in this period.¹¹⁰ Though it is not possible to determine the length of this couple's marriage, the fact that the husband decided to make his wife a partner in ownership might be an indication of the value he placed on his wife. It is also possible that he needed money and his wife, who apparently had some, would not give it to him without some guarantees. Hence, there may be a material basis to this relationship as much as (if not more than) affection. Perhaps upon the request of his wife, the husband

¹⁰⁹ DPM 15, 28/5 (1790).

¹¹⁰ For a detailed discussion of the wages and prices in the mentioned periods, see Şevket Pamuk, *Ibid.* Compare also Charles Issawi, *The Economic History of Turkey, 1800-1914* (Chicago: The University of Chicago Press, 1980), 321-41.

opted to formalize this important decision to share ownership and registered it in court. Women also took similar actions, using the court to formalize and register the selling or granting of their possessions to their husbands.

As mentioned above, it was quite common for women to take action to sell their private or commercial property. The case of ‘Āyşe is similar to that of es-Seyyid Muştafā, but in this instance the wife sold a part of her estate to her husband.¹¹¹ On April 18, 1790, the aforementioned ‘Āyşe, who was a resident of the Hoca Hüsrev neighborhood near the Koca Muştafā Pasha Mosque, appointed Muslī Agha as her proxy regarding the registry of her property allocation. Muslī Agha, whose relationship to ‘Āyşe is not mentioned, presented her case regarding her husband, Meḥmed Beşe, stating that ‘Āyşe had waived her rights to the deferred portion of her dower in the amount of ten gurushes and gave her husband the twenty-two dirhems, one pair of golden bracelets, and two golden rings that she had brought into her marital household. ‘Āyşe’s representative further stated that she sold some of her household possessions, namely, seven pillows, four cushions, three head-pillows, three duvets and duvet cover, one dress made of chenille, one cardigan made of chenille, one gown made of broadcloth, four pots with their lids, six pans, two lids, two washtubs, and long-spouted pitchers for a sum of thirty gurushes to her husband.

What is interesting about this record is that ‘Āyşe gives some of her valuable possessions to her husband. The reason for this action is not explained. ‘Āyşe’s desire to obtain a lawful divorce or permission for divorce from her husband may well have been the cause of her action. If her husband, Meḥmed Beşe, suggested that she should

¹¹¹ *DPM* 15, 23/3 (1790).

renounce her final dower portion as well as jewels, this could explain why ‘Āyşe waived her ownership of these possessions. However, it is unclear as to why she is selling her kitchen utensils and other textile materials to her husband, perhaps she was leaving that household. The only information that can be obtained from the record regarding Mehmed Beşe is that his title, “beşe”, denotes that he was probably a member of the Janissary corps. The fact that her proxy’s appellation was “agha” also points to a likely military association. In addition, his father’s name indicates his Muslim origin. Although it is difficult to assess the reasons for such an exchange, it is indeed significant that the transfer of cash and property between spouses was a common factor in the lives of urban married couples in the late-eighteenth century.

The fact that we find a large amount of cases concerning husbands’ and wives’ registration of bestowing or “selling” their property to each other could be interpreted as an effort to protect one’s possessions against the state’s interventionist policy. Zilfi has suggested that in the late-eighteenth century there was an apparent “urge to protect family wealth [as] a response to the state’s growing appetite for the fortunes of individuals whose estates were not legally subject to seizure.”¹¹² A similar new policy concerned the collection of valuables made of gold and silver in return for a fixed rate by the imperial mint in this period; the fixed rate tended to be lower than the market rate.¹¹³

¹¹² Madeline C. Zilfi, “Muslim Women in the Early Modern Era,” 240.

¹¹³ The collection of these items was a policy first introduced by ‘Abd’ul-ḥamīd I (1774-1789) and followed by his successor Selīm III in an effort to generate sources to compensate for the metal deficiency in the minting of coins. During the reign of Selīm III (1789-1807), the new policies regarding the collection of silver and gold from the people were upheld by issuing a fetvas that ratified the state’s seizure of these materials, claiming their use as excessive and illicit. See, for instance, the imperial order regarding the decision to obtain a fetva from the *şeyhü’l-islām* to ban the use of silver materials and the coercion of the Ottoman subjects to sell these materials in their possession to the imperial mint in order to facilitate the minting of new coins as well as the provision of funds for campaign expenses, *BOA*, HH 182/8353 (2 Zilhicce

On January 12, 1790, the kadi of Bolu responded to the Imperial Edict prohibiting the people from using gold and silver materials in the making of platters, trays, rings, sword handles, belt meshes, and women's jewelry, due to a shortage of these materials needed for the minting of coins.¹¹⁴ The kadi stated that a court decision had been declared to prohibit the use of these metals that the government might need in minting.¹¹⁵ This and many other similar reports by the kadis of various districts reflect the extent of financial crisis and economic anguish that the late-eighteenth-century wars with Russia (1787-92) inflicted on the Ottoman state.¹¹⁶ The edict dated November 1790, regarding

1203/ 31 December 1788). See also the fetva regarding the sale of implements and luxury items made of gold and silver to the imperial mint by their owners, *BOA*, HH 226/12578 (11 Şafer 1204/ 31 October 1789). During this period of shortage of coinage metals, the state was pressured by the campaigning army to provide their payment in gold coins, see *BOA*, *C.ML*. 112/4987 (21 Şa'bân 1205/ 25 April 1791). Hence, the state issued an edict obliging the people to sell their silver and gold objects for a certain fixed cost to the imperial mint. Accordingly, the imperial mint was to buy one *miskal* or twenty-four carats of gold for six gurushes and thirty *paras* and one *dirhem* or three grams of silver for ten *paras*, in *BOA*, HH 201/955 D (29 Zilhicce 1203/ 20 September 1789); for a detailed explanation of the sequence of procedures regarding the handling of this financial crisis regarding coin debasements and the state's attempts to resolve the issue: see in Yavuz Cezar, *Osmanlı Maliyesinde Bunalım ve Değişim Dönemi: XVIII. Yüzyıldan Tanzimat'a Mali Tarih* (İstanbul: Alan Yayıncılık, 1986), 138-151; Uzunçarşılı, *Büyük Osmanlı Tarihi* 5 (Türk Tarih Kurumu Yayınları, 1995), 596-599 and 601-602; Enver Ziya Karal, *Selim III'ün Hat-tı Humayûnları, Nizam-ı Cedid, 1789-1807* (Ankara: Türk Tarih Kurumu Yayınları, 1946), 84-85.

¹¹⁴ The decision of the kadi of Bolu is in response to the notice prohibiting the use of gold and silver to make such housewares as plates and trays. Since there was not a sufficient supply of these materials for the minting of coins, the state did not permit their usage in the making of things other than rings, sword shafts, threading for mesh belts, and women's jewelry, in *BOA*, *C.DRB.*, 3/104 (25 Rebî'ülâhîr 1204/ 12 January 1790).

¹¹⁵ A similar court decree was issued by the kadi of Erzurum on the second day of February 1790, which confirmed his announcement of the Imperial Edict prohibiting the use of gold and silver rings, belts and other women's ornaments as well as pots and pans made out of silver and gold. The edict commanded the compulsory return of such luxury items since funds were needed for the provision of war equipment. Hence, the kadi's note confirmed the enforcement of the sale of the aforementioned items. On February 22, 1790, the report from the district of Izdin (in today's Greece) concerning the decree banning silver and gold usage in items such as women's ornamentation as well as weapons points to the widespread influence of the ban on usage of these metals: in *BOA*, *C.DRB.*, 18/874 (7 Cemâziyelevvel 1204/ 22 February 1790). The last document in the series was dated March 12, 1790 and was the official response of the *nâ'ib* of Erzurum to the Porte's enforcement of the sale of silver and gold items to the Imperial mint for the established price, in *BOA*, *C.DRB.*, 28/1370 (25 Cemâziyelevvel 1204/ 12 March 1790). The petitions by the kadi of Vize in Thrace address the same issue in *BOA*, *C.DRB.* 1/13 (11 Rebî'ülâhîr 1238/ 26 December 1822), and *BOA*, *C.DRB.* 19/920 (29 Rebî'ülâhîr 1238/ 13 January 1823).

¹¹⁶ The state used all its resources to control the use of precious metals such as gold and silver needed for the minting of coins. Şakul has explained this phenomenon by suggesting that "funds transferred from the

the collection of silver and gold materials is also mentioned in the chronicle of Taylesanizāde Hāfiz ‘Abdullāh Efendi, the eighteenth-century historian that was formerly a kadi.¹¹⁷ The Sultan, the Grand Vizier, the Sheikh’ul-islam, and other state and military officials, and the ulema summoned all their silver possessions and presented them to the Imperial Mint in return for ten paras.¹¹⁸ The Porte’s confiscation of gold and silver to meet the challenges of the wars with Russia continued until 1820s.

The state’s rigorous confiscation policy during the nineteenth century could be the reason why married couples’ ‘bought and sold each other’s property. Also, registering property exchanges in court required a fee—why would spouses who appeared to be happily married choose to pay for swapping ownership of their effects in court? The act of buying and selling these effects was not “real” in the sense that women usually absolved the sum owed by their husbands when property was exchanged. A possible reason why married couples registered ‘pseudo exchanges’ of property in court could have been to protect their estate from the government’s acquisition in the event of the

Imperial Mint constituted the second greatest proportion of the extraordinary wartime revenues in 1789-99...despite their fiscal exemptions, religious endowments were forced to contribute substantially to the war effort beginning with the Ottoman-Russian wars of the late-eighteenth-century to meet the financial challenges of war,” see Kahraman Şakul, “An Ottoman Global Moment: War of Second Coalition in the Levant,” (Ph.D. dissertation, Georgetown University, 2009), 218.

¹¹⁷ Feridun M. Emecen, haz., *İstanbul’un Uzun Dört Yılı (1785-1789) - Taylesanizāde Hāfiz Abdullah Efendi Tarihi* (İstanbul: Tatar Yayınları, 2003), 426. *Taylesanizāde* recorded that the matter was ordered by an edict, an imperial decree, and two fetvas by the *şeyhü’l-islām* on the second day of the aforementioned month. The edict prohibited the use of silver and gold for both men and women defining it as unlawful. It listed all the items that were supposed to be sold or granted to the Imperial mint, suggesting that the mint would pay ten *paras* for each *dirhem*. The metals would be used for minting coins for the campaign, and every person abided by this order.

¹¹⁸ Cezar points out that the accumulation of the above-mentioned materials by the imperial mint was more likely the result of the donation of these materials by the palace officials and the sultan. Cezar’s suggestion that the public was most probably reluctant to sell their silver and gold possessions remains an assumption due to the lack of its substantiation by sources, but it is highly probable, see Cezar, 139-140.

death of one of the spouses. Hence, the exchange might serve as a protective shield rendering marriage a safeguard of property.

People felt the urge to record their financial dealings in court, and spouses were no exception. They probably chose to formalize the exchange of property because it affected their inheritances. Since a separate economy in marriage was the norm, many transactions of shared property were certified in court to protect the rights of both parties. Owning property, and having control over it by engaging in various dealings regarding it, empowered women within the marriage. The previously discussed cases show the level of agency and self-assertion enjoyed by women with access to a certain level of wealth. In his assessment of fourteenth- and fifteenth-century fetvas and treatises by jurists regarding the nature of the monetary relationship of spouses, Rapoport suggested that although a husband was only required to provide support for his wife in kind according to the letter of Islamic law, husbands' paying cash allowances to their wives had become the common manner of maintenance in marriage.¹¹⁹ Similarly, in eighteenth-century Istanbul, cases involving the exchange of property and cash between spouses could be interpreted as a significant further monetization of marriage, which led to the empowerment of women. Under such circumstances, repudiation was no longer a threat to women since their financial autonomy granted them a voice that could challenge the hierarchy within marriage.

¹¹⁹ The author states that by the fifteenth century, a variety of cash payments, especially instead of clothing, became common forms of support. Rapoport, 59.

Şerīfe Fāṭma, a resident of the Kātib Müşliḥüddīn neighborhood near Altımermer, requested that İsmā‘il Beşe represent her in court.¹²⁰ In his statement, İsmā‘il Beşe said: “My client Şerīfe Fāṭma has granted her husband, Meḥmed, her portion of the deferred dower in the amount of eighty gurushes and a valuable Qur‘an which is her property. In addition she has given him from her own property one çatma, ten pillows, three cushions, two mattresses, five quilts with sheets, one mattress cover, one bedding mattress, three broadcloth cushions, ten shallow pans, four pan lids, six small pans, six pots with lids, two pitchers, one basin with lid, two candlesticks, one furred hat, one fur, one Damascene multicolored dress, one white dress, two broadcloth headscarves, two Damascene multicolored baggy trousers, one pair of white baggy trousers, one old throw, four head pillows, two dresses, three blouses, two towels, one hammam towel, one hammam pot, one soup pot, one tray, one chair, two straw mats, and one chest, which she sold to her husband, the aforementioned Meḥmed, for a sum of sixty gurushes, absolving Meḥmed from his due payment of a dower in the amount of eighty gurushes.” With this statement, Şerīfe Fāṭma gave up her rights to her sold property and copy of the sacred Qur‘ān on July 19, 1783.

In the works of Judith Tucker and Margaret Meriwether¹²¹ on Egypt and Aleppo in the eighteenth and nineteenth centuries respectively, two types of marriage models were discussed: the ‘patriarchal’ marriage in which a woman goes from the control of her father (and his household rules) to that of her husband and his mother, and the ‘companionate’ one in which the spouses operated more like business partners and treated

¹²⁰ *DPM* 2, 32/2 (1783).

¹²¹ See Tucker, “Problems in the Historiography of Women in the Middle East: the Case of nineteenth-century Egypt,” *IJMES* 15 (1983), 321-336; and Margaret Meriwether, *The Kin Who Count*, 120-121.

the institution of marriage as such. In the first model, the bride remains a permanent outsider; in the second model, she is in charge or shares the role of being in charge of the family's economic transactions. Given that some women entered into the marriage with a certain amount of property, the first model of marriage could only have a transitory effect in the lives of the spouses. The relationships that women established with their husbands revealed in the Istanbul court records suggest that women were very much in control of their own lives with respect to access to the court, economic activity, and their familial role within the household. In addition, as will be demonstrated in the next chapter, in the faction of society that attended the court, I observed that women's agency and activity in the economic sphere was recognized by their husbands and male kin. At times, men gave their wives the right to manage and control their property for them. Hence, I offer a likely reading of the cases that reflect women's experiences with respect to marriage and property ownership, suggesting that the predominant marriage pattern observed in my sources was companionate. However, considering that our knowledge of court attendance in this period is limited, it is difficult to provide definitive arguments regarding the whole of society.

Based on the archival material analyzed, the correlation between women's property and their access to court substantiates the assertion that a number of marriages in late-eighteenth-century Istanbul were closer to the 'companionate' marriage model described by both Tucker and Meriwether. Nevertheless, perhaps if we were to examine those cases that were never brought to court, we would find that the predominant family structure of marriage was much more patriarchal. Despite the fact that they had agency within the economic network, women with status experienced their encounters mostly

indirectly through the assistance of representatives.¹²² For instance, we know that families in which women were economically active usually were not part of the political and economic elite classes in Egypt and Aleppo.¹²³ Examination of the court records leads to the same conclusion in the case of Istanbul, since middle- and lower-middle class women either shared property or owned it separately and they tended to be in charge and act as business partners within the marriage.

The concept of a separate economy within marriage could also be detected through the dynamic relationship regarding labor between the spouses. On September 18, 1783, es-Seyyid Muṣṭafā stated in the Dāvud Pasha court that his ex-wife, ‘Āyşe, whom he had previously divorced, owed him sixty-six gurushes in return for his physical work on the farm.¹²⁴ Conciliators dissuaded him and in the end Es-Seyyid Muṣṭafā absolved ‘Āyşe from paying the amount due. This record demonstrates that married couples not only exchanged and purchased property and goods from each other, they also charged one another for their labor and monitored financial transactions between each other.

On August 27, 1756, a certain Zeyneb from the Maḥmūd Pasha neighborhood presented her case regarding her husband ‘Ömer Beşe.¹²⁵ In her testimony, Zeyneb stated

¹²² “It is a common finding of studies of women and property that women’s representation among the wealthy is inversely proportional to the amount of wealth at issue.” It is a possibility that women of the elite social milieu handled their legal matters by way of representatives, either not necessarily feeling the need to attend the court or not attending due to their husbands and fathers keeping them from asserting this kind of autonomy. What Zilfi stated in the recitation refers actually to their representation which is difficult to assert definitively, however, it is likely that upper-class women’s agency was restricted compared to women of lesser social status. For a further discussion see Madeline C. Zilfi, “Muslim Women in the Early Modern Era,” in *The Later Ottoman Empire 1603-1839, Cambridge History of Turkey* 3, ed. Suraiya N. Faroqhi (Cambridge University Press, 2006).

¹²³ Faroqhi, 185.

¹²⁴ *DPM* 2, 71/11 (1783).

¹²⁵ *AÇM* 206, 2/2 (1756).

that she sold half of the shares in her house, located in the Hızır Bey neighborhood near Küçük Pazar, to her husband for a sum of 300 gurushes. The house is described as surrounded by the plot of land owned by Aḥmed Beşe, the Albanian, on one side; the land of Hacı Muştafâ, the cauldron maker, on the other side; and a public alley on the two remaining sides. The record mentions that the remains of the houses owned by Aḥmed Beşe and Hacı Muştafâ, which had been destroyed in a massive fire, stood on their properties. The house of Zeyneb consisted of three floors. The top floor comprised a room and an antechamber; the middle floor held two rooms, one larger than the other; and the ground floor was an enclosed space resembling a courtyard. Zeyneb stated that she received her husband's payment in full and no longer held ownership rights to half of the shares in the house. The case was registered in the presence of six male witnesses. This record is an interesting example of money exchange between the spouses where the married couple ensured joint ownership of a residential property.

Another common feature found in the records evaluated was that married couples often engaged in acquiring property with joint entitlement. On August 2, 1806, Ḥafîze, presented her case in court regarding Duḥānî Muştafâ Agha and his wife 'Āyşe.¹²⁶ In her statement, Ḥafîze explained that she had inherited a two-story house that consisted of one room and an antechamber on the upper floor and a kitchen, toilet, and enclosed courtyard on the lower floor. Ḥafîze further stated that Muştafâ Agha and 'Āyşe bought this house together, paying her a sum of 164 gurushes. In Ḥafîze's testimony, the fact that the house became the shared property of the spouses is stressed by the usage of the word "aleliştirākü'l-sevî," which implies that the married couple paid an equal value to buy the

¹²⁶ DPM 47, 68/5 (1806-7).

house. Ḥafīze finally had it recorded in court that she no longer had any claim or entitlement over the property and that it had now become the joint property of Muṣṭafā Agha and ‘Āyşe. This case is extremely important since the new owners of Ḥafīze’s house, who were also present in court, made certain that the house became both of their property. The fact that two of the neighbors of the property, Altıncı Şālih Agha and Bostānī Şālih Agha, had the honorific ‘Agha’ is likely due to their military connections, though it could designate other affiliations in this period. Perhaps Muṣṭafā, who also was an Agha, chose to buy a house in the vicinity of his fellow colleagues. The price of the house, 164 gurushes, was a significant amount for this period. Hence, it can be deduced that the married couple were fairly affluent. This record is an example of how married couples developed common material interests. However, it is important to note that any material property acquisition during the marriage did not mean that both spouses had entitlement. A property acquired during the marriage was formally owned by the party who financed it, unless it was paid for by both of the spouses, or they formally registered it as their joint estate as a couple. Hence, as in previous decades, the concept of a separate economy within marriage was a trend that continued in the late-eighteenth century.

Another such example of shared property within marriage is the case of ‘Āyşe, daughter of ‘Abdullāh, who might have been a convert to Islam, and her husband es-Seyyid Muṣṭafā, son of es-Seyyid Meḥmed.¹²⁷ In January of 1784, ‘Āyşe testified in the Dāvud Pasha court that she and her husband shared possession of a house bordered by the house of Ḥalīl Agha, whose plot of land belonged to the late Imamzāde Sheikh Meḥmed

¹²⁷ *DPM* 2, 56/8 (1784).

Efendi endowment on one side; the house of the Imām on another side; a small shop and a school on the third side; and a public alley on the remaining side. The house consisted of two rooms and an antechamber on the upper level; and a kitchen, bathroom, one well, two mirror shop *gediks*, and two tailor shop *gediks* on the ground level. The land on which the house stood was owned by the Imamzāde Sheikh Meḥmed Efendi endowment, and it was let to them as property for a long duration by way of *muḳāṭa ‘a-yı ḳadīme*¹²⁸, for the fixed amount of 180 akças per year. There were four shares in the house; one belonged to es-Seyyid Muṣṭafā and the rest to ‘Āyşe. ‘Āyşe stated that she sold the entitlement and proprietorship of her three shares to her husband, whom she referred to as “Derviş” (dervish) es-Seyyid Muṣṭafā, later for a total of 450 gurushes. After he accepted the sole entitlement to the house, ‘Āyşe declared that she released her husband from paying the 450 gurushes. It is important to note that this case could have been settled

¹²⁸ Although in this case the term perhaps is used in the simple sense of rent, for a definition and discussion on the development of the concept of *muḳāṭa ‘a* in the eighteenth century see Mehmet Genç, "Mukata‘a," *DIA*; Avdo Sućeska, "Malikane," *Prilozi za orijentalnu filologiju* 8-9 (1958-0): 111-42; Erol Özvar, *Osmanlı maliyesinde malikane uygulaması* (Istanbul, 2003); M. Ziya Karamürsel, *Türkiye iktisadi tarihi* (Istanbul, 1931), 172-74. Cezar explains that the “malikâne mukataa” of public revenue was a farming out system of state-owned lands for a fixed sum for the duration of one’s lifetime, in which the leaseholder collected the dues for his own account. The owner of the mukata‘a would be able to save all the dues after the “mal and kalemiyye” (yearly payments and expenses) were taken out. The mukataa land would only be returned to the state in the event of the owner’s death after which the state could opt to re-rent the land, in Cezar, *Osmanlı Maliyesinde Bunalım*, 165-169. Yayıoğlu explains that, “according to the *malikane* system, a tax or revenue unit was sold to entrepreneurs with fiscal and administrative immunity and for life term. In this system, the central administration sold the revenues and taxes of these units for higher prices with long term guarantees, while the *malikane* holders were expected to invest in their units as well as to administer and oversee the taxpayers more efficiently and justly, since the units were granted to them for life term,” in Ali Yayıoğlu, “The Provincial Challenge: Regionalism, Crisis, and Integration in the Late Ottoman Empire (1792-1812),” (Ph.D. dissertation, Harvard University, 2008), 36 and 70-121. For a detailed discussion of this new system that was intended to improve the economy during this period of financial crisis, see Baki Çakır, *Osmanlı Mukataa Sistemi (XVI-XVIII Yüzyıl)* (Istanbul, 2003): 72-80. Mehmet Genç, "A comparative study of the life term tax farming and the volume of commercial and industrial activities in the Ottoman Empire during the second half of the 18th century," *La révolution industrielle dans le sud-est européenne, XIXe siècle*, ed. Nikolai Todorov (Sofia, 1979); idem., "XVIII. yüzyılda Osmanlı ekonomisi ve savaş," *Yapıt: Toplumsal Araştırmalar Dergisi* 49, 4 (1984): 51-61; idem. "Osmanlı Maliyesinde Malikane Sistemi," *İktisat Tarihi Semineri*, eds. Osman Okyar and Ünal Nalbantoğlu (Ankara, 1975): 231-96; Murat Çızakça, *A Comparative Evolution of Business Partnerships: The Islamic World and Europe, with Specific Reference to the Ottoman Archives* (Leiden, 1996).

among the spouses without involving the court and paying a fee to register the case. The fact that this couple registered the case and paid the required fee demonstrates their eagerness to formalize their decision. This formalization, however, was not an adversarial action since they both agreed on all aspects of the exchange. Instead, it appears to be a protection against a possible seizure by the state or, more likely, claims by other heirs. Hence, both es-Seyyid Muṣṭafā and ‘Āyşe utilized the court in a precautionary method to secure their shared property. The fact that initially ‘Āyşe owned three-quarters of the shares in this property and her husband owned one quarter suggests that the *mukāṭa‘a* was previously leased to ‘Āyşe’s paternal family. ‘Āyşe possibly inherited the house and brought it into the marriage, and might have bestowed one-fourth of the shares to her husband. At first, ‘Āyşe stated her husband’s name as es-Seyyid Muṣṭafā, son of es-Seyyid Meḥmed, without any other appellation. Later in the case, she mentioned her husband’s honorific, *derviş*, probably as a means of demonstrating his devotion and vocation, and possibly due to his affiliation with a *tekke* (dervish lodge).

There were also instances when a husband or wife came to court and accused the other of unlawful expropriation of his or her property. The aggrieved spouse would demand return of the particular possession, and the court would ask the blamed accused to prove his/her innocence in the matter. On October 2, 1806, Zeyneb presented her case in court regarding her husband Aḥmed Beşe.¹²⁹ In her testimony, Zeyneb stated that she had given Aḥmed Beşe forty-five gurushes as a loan. She demanded that the court advise her husband to repay the sum. When Aḥmed Beşe swore that Zeyneb’s allegations were not true, she had no evidence to verify her claim. Zeyneb was forbidden to reclaim forty

¹²⁹ DPM 47, 80/6 (1806).

gurushes from her husband Aḥmed Beşe without the necessary evidence or witnesses. Although it is not possible to determine which spouse was telling the truth, the document demonstrates that moneylending occurred between couples.¹³⁰

The case brought forth by Emīne in 1794 regarding her husband ‘Alī Çavuş is an example of the way spouses could reclaim their own property after it had been usurped into common belonging during a marriage.¹³¹ According to the entry, Emīne and her husband, who was a *silāḥdār* officer of the Musa Çavuş division, were divorced by his repudiation of her. She stated in her testimony that ‘Alī Çavuş married her with the promise of 250 gurushes dower which he kept even after their divorce that took place two months prior to the record. She added that apart from her due dower, he had bought and taken possession of her shares in a plot of land while they were still married. Emīne was now demanding seventy-five gurushes for the land he bought from her, ten gurushes which he had borrowed, as well as seventeen pieces of Islāmbulī gold. In addition to the aforementioned belongings, Emīne demanded return of a pair of emerald-encrusted gold belts from ‘Alī Çavuş. When the court questioned him about the matter, ‘Alī Çavuş countered her testimony by stating that Emīne had married him offering a deferred dower of 190 gurushes, that he had paid her the seventy-five gurushes for the share of the land plot, and that he had never borrowed money from her nor taken her emerald-encrusted gold belt. When Emīne managed to prove the truth of her claims, the court made ‘Alī Çavuş grant her the rest of her dower in the amount of sixty gurushes, as well as the seventy-five gurushes, the ten gurushes which he borrowed from her, the seventeen

¹³⁰ The amount claimed by Zeyneb was forty-five gurushes, but the register stated that she could no longer demand repayment of forty gurushes. Was this an honest mistake by the court official? Or, since the claimant was unable to prove her case properly, was the amount deemed to be no longer important?

¹³¹ *DPM* 25, 84/10 (1794).

pieces of İslambuli gold, and the emerald-encrusted gold belts. Emīne's determination and persistence in court allowed her to rectify her husband's abuse. She had thought that it was reasonable for her to share her possessions or yield to the usurpation of her possessions, with her husband. However, once her repudiation was effective, she realized that she could reclaim most of the property that was officially hers. Hence, since Emīne could provide evidence of her ownership of the materials, the court decided in her favor sanctioning her husband to return what was originally and rightfully Emīne's.

The experiences of other women were not always as positive as Emīne's. The case of Esmā, a resident of the Sheikh Ferhad neighborhood, is an example of how women could be forced to absolve their legal rights to ownership of property through marriage.¹³² Esmā stated in court that she granted sole custody and ownership of the property in the house she shared with her husband, es-Seyyid Mehmed Beşe, to him. The property included twenty-four *çatma* cushions, four regular cushions, three cushions handmade in Cypriot style, three small cushions, four duvets with duvet covers, one day bed, two head pillows, one prayer rug made of broadcloth, two Damascus-style speckled dresses, one silk gown, one bed sheet, one hammam set, one valuable fur, two blouses, four pots with lids, seven pans with lids, one soup bowl, three trays, three milk jugs, one washtub, two water pitchers, and one ablutions washtub. She further stated that she granted her husband ownership of other valuable things in the house as well. Esmā gave up the right to her delayed dower in the amount of one hundred gurushes. She stated that she acquitted her husband es-Seyyid Mehmed Beşe from paying her 150 gurushes in return for the property she had given him. Her case was recorded in court on April 22,

¹³² DPM 25, 18/3 (1795). Many similar entries were found in the defter, see especially 45/3, 47/2, 52/2, 80/4, 81/1, and 92/6.

1795. Esmā probably decided to give up her right to ownership of her own property due to her husband's coercion. Perhaps she was misinformed regarding her rights within marriage. Also, if she was a convert to Islam, she may have felt that her husband, being a *Seyyid*, had more power within their marriage. Hence, her feelings of inferiority might have caused her to succumb to her husband's request for a transfer of property.

In the sicils that were examined, it appears that non-Muslims habitually utilized the kadi's court regarding the confiscation of their property by a spouse. The case of Angeliye, daughter of Nikola, a resident of the Mīraḥor neighborhood, is a noteworthy illustration.¹³³ In her testimony, Angeliye, the *zimmīye*¹³⁴, claimed that her husband Anāştāş [?], son of Yōrgī, had taken 145 gurushes from her. In addition to this sum, Angeliye suggested that Anāştāş took five precious golden bracelets and one golden belt that belonged to her. She now demanded the return of this property. The court interrogated Anāştāş and he denied his wife's allegations. When Angeliye failed to provide evidence for her case, her husband was made to swear an oath as to the truth of his claim. The court prohibited Angeliye from reclaiming her bracelet and belt in the future. There was no mention of the 145 gurushes that Angeliye previously demanded. Perhaps the scribe did not deem it important to note the money involved in this record since the court's decision prohibiting Angeliye's from reclaiming any material assets from her husband was final. This finality made listing all the possessions described by Angeliye irrelevant. Although it is impossible to decipher this aspect of the record, it is important to note that a *zimmī* woman, whose faith did not have the same rules regarding

¹³³ DPM 15, 72/10 (1790).

¹³⁴ The term designates non-Muslim.

property in marriage, adhered to the sharī‘a court. In this regard, it is significant to find Angeliye’s case in the sicils given that the dower was typically not mentioned in divorce cases registered by *zimmīs*. In fact, it is significant to note the occurrence of any case concerning the finances of a *zimmī* couple in the sicils.¹³⁵

This chapter investigated the Islamic notion of spousal compatibility, namely *kufuww*, in terms of how it was internalized and experienced through property allocation patterns in marriage. By analyzing negotiation strategies concerning dower arrangements, provision of allowances during marriage, and alimony after divorce by the husband to the wife, I attempted to understand issues concerning women’s agency and activity within the marital union. The chapter also revealed that women were eager to report—and register in court—their husbands’ neglect of their basic spousal responsibility to pay allowance and alimony. Although it was nearly impossible to determine whether women received their full dower amount after divorce, they were nevertheless very vocal about the injustices they suffered regarding their finances.

In my quantitative analysis of the values of deferred dower recorded in three courts over the course of sixty years, I assessed that the values of the deferred dower increased considerably even after adjustment for inflation. Hence, given the rise in prices during the period encompassing the late-eighteenth century and the earlier half of the nineteenth century, it appears that the increase in the deferred dower values corresponded to this rise. I also observed that the living standards and social status of individuals had a

¹³⁵ An important source for the non-Muslims’ use of the sharī‘a courts is the dissertation of Najwa al-Qattan, “Dhimmi in the Muslim Court: Documenting Justice in Ottoman Damascus, 1775-1860,” (Ph.D. dissertation, Harvard University, 1996); idem, “Inside the Ottoman courthouse: Territorial Law at the Intersection of State and Religion,” *The early modern Ottomans: Remapping the Empire*, eds. Virginia H. Aksan and Daniel Goffman (Cambridge, UK ; New York: Cambridge University Press, 2007), 201-213.

direct bearing on the size of dower offered. Two important findings were that there were more cases involving women demanding the deferred portion of their dower in the Dāvud Pasha court than in the other two courts and that women claimants with lower dowers constituted the majority of this type of suit. Between the years 1834 and 1840, there was a sharp rise in recorded deferred dower values in all three courts' records. This result suggests that there is need for further work on the assessment of dower amounts in the records of other district courts in Istanbul during this designated period. Perhaps a systematic diachronic analysis of the relationship between the deferred dower values and the general standards of living in Istanbul would produce more conclusive results regarding the status of individuals and the kind of dower values they offered at the onset of marriage.

The dower and allowance rendered marriage as a protective mechanism for men as well as women. The transfer and assurance of these amounts delineated the structure of the relationship between the husband and the wife. Consequently, it may be suggested that marriage was a highly monetized institution. In my exploration of children's roles affecting the transfer of funds between spouses, I considered the financial pressures of women who were raising children both during the marriage and after its dissolution. My appraisal of original sources showed that mothers who initiated their divorces assumed full financial responsibility for their children; fathers, however, seem to face no obligation to provide economic or sentimental care until the children reached the predetermined age at which their custody would be given to the father.

The extensive visibility of women in court demonstrates their practical use of the court's authority to negotiate a more egalitarian status with men. Women's access to

property rights, the level of autonomy they exerted over their possessions within marriage, and their participation in the legal sphere as active figures suggests women's power within their marital union. More importantly, the acceptance of separate economies within marriage put women living in the late-eighteenth century Ottoman Empire in a better position than their European counterparts. Ottoman women were property owners, creditors, and investors; through that power, they became active and visible agents. The following chapter will describe the financial roles women undertook and the ways that affected the gender hierarchy within marriage.

CHAPTER FOUR

Women, Death, and Property Transmission Strategies in Marriage

In this chapter, I explore the question of property ownership by women in terms of their involvement and agency in transmission and allocation strategies deployed within the family. Scholars of Middle Eastern history have assumed that women were in charge of their property both within and outside of marriage. However, this notion was not truly substantiated given the normative nature of the courts.¹ As discussed in previous sections, the sicils only partially reflect the environment in which a case was recorded. Although it is not possible to suggest whether the account recorded in the first person was actually stated by a woman or her husband or father, there are those records in which a husband makes a gift of his house to his wife, or chooses her as the executor of his estate, which is perhaps a better illustration of women's agency. In such lawsuits and registries, it is evident that the husband or father prefers his wife, or daughter to other potential heirs to acquire his property and even manage its allocation.

Certainly, there are other sources that enable the historian to read between the lines. For this reason, in my discussion of women's activity and practices in managing and transmission of their possessions, I use estate inventories and bequests to corroborate my

¹ On the issue of the court records only reflecting the official sharī'a view of women's rights and not their actual social status, see Ze'evi, "The Use of Ottoman Sharī'a Court Records," 35-56; Recent scholarship on the sicils have gone beyond the idea of the court being solely normative. Some of these works include Agmon, *Family and Court*; idem, "Recording Procedures and Legal Culture in the late Ottoman Shari'a court of Jaffa," 333-370; Agmon and Shahar, "Shifting Perspectives," 1-19; Peirce, *Morality Tales*; Tamdoğan, "Sulh and the 18th Century Ottoman Courts of Üsküdar and Adana," 55-83; Ergene, "Why did Ümmü Gülsüm go to Court?" 215-244; idem, "Pursuing Justice in an Islamic Context: Dispute Resolution in Ottoman Courts of Law," *Political and Legal Anthropology Review* 27 (2004): 51-71.

interpretation of women's relationship to property as they were manifested in the sicils. Apart from being marked by ongoing wars and continuous internal revolts, the period in question was also the era during which such innovations as the *esāme* (the state's sale of infantry and cavalry regiments' pay-certificates) and the *gedik*² (use-rights to the implements of an artisanal or trade work premise) emerged. The primary objective of this chapter is to demonstrate the level of initiative and administrative control that women asserted, especially with respect to their participation in those innovations.

In the first part of the chapter, I examine women's management of their property in face of the changing circumstances and recently introduced financial and economical structures. In the second part, I identify the methods people applied to circumvent or manipulate the sharī'a's compulsory rules of inheritance and explore quantitatively how these reflected on women's positions in the marital union. In his appraisal of the formation of bequests, Layish contended, "The bequest is being used as a means to prevent fragmentation of the patrimony and to preserve it in the hands of the testator's sons or, in their absence, other male agnates, in units as complete and economically sound as possible."³ In my

² The authoritative article on the emergence of *gedik* in this period is by Akarlı, see Engin Deniz Akarlı, "Gedik: A Bundle of Rights and Obligations for Istanbul Artisans and Traders, 1750–1840," in *Law, Anthropology and the Constitution of the Social: Making Persons and Things*, eds. Alain Pottage and Martha Mundy (Cambridge University Press, 2004), 166–200; Yi has addressed the tendency of the scholarship to treat the *gedik* as a monolithic institution, in Eunjeong Yi, *Guild Dynamics in Seventeenth-Century Istanbul: Fluidity and Leverage* (Leiden, Boston: Brill, 2004), 148–149. For the evolution of the term *gedik* until the nineteenth century see the entry by Ahmet Akgündüz, "Gedik," *TDVİA* 13 (İstanbul: Türkiye Diyanet Vakfı, 1988x), 541–543. Note that Akgündüz's explanation that the origin of the term *gedik*, in the sense that it was used in the eighteenth century could be traced back to the sixteenth century has been disproved by Yi as contradictory. According to Yi, Akgündüz's reading of the treatise of the famous *şeyhü'l-islām* Ebussuud Efendi suggested that the meaning of *gedik* indicated the usufruct of waqf shops. Yi contends that many of the early *gediks* were in service trades that did not require shops, such as the water-carriers guild, see Yi, 149, ft. 129.

³ Layish has considered in detail the bequests of each testator, classifying them in terms of the apportionment choices they made based on their gender and the gender of their heirs, see Aharon Layish, "Bequests as an Instrument for Accommodating Inheritance Rules: Israel as a Case Study," *ILS* 2/3 (1995), 282.

assessment of property allocation patterns by married individuals, I observed that families applied strategies such as the endowment of family waqfs, wills, gifts, and sale of valuables to preserve ownership of their possessions within the family.⁴ The bequests did not indicate an inclination vis-à-vis preserving the patrimonial devolution of property. On the contrary, my analysis illustrated that women's capacity to manage their own property—as well as their families'—was openly recognized by even their closest male relatives and husbands. The direct involvement of some women in property allocation practices reinforces the view of women's agency, beyond the textual evidence in the sicils.

The Case of Fāṭma Ḥanım: A “Chronicle of a Death Foretold”

On a Friday morning in middle of May 1800, Fāṭma Ḥanım decided she would register her will in court.⁵ As her title *Ḥanım* implies, Fāṭma was not an ordinary woman. She was the daughter of a well-to-do family of İstanbul who were embedded within the learned elite. Her father, Şālih Efendi, had passed away, leaving her with a considerable estate. Fāṭma enjoyed the comforts of the life entrusted to her by her father. On the day that her case was recorded in the Dāvud Pasha court, Yaḥyā-zāde 'Mevlānā' es-Seyyid Sa'dullāh

⁴ Such strategies were also addressed by Ergene and Berker, “Gifts and fictitious sales before death as well as nonmonetary services provided to offspring—such as education, sociocultural capital, and access to kin-based and professional networks of support—also must have contributed to the wealth levels of successive generations” in Ergene and Berker, “Inheritance and Intergenerational Wealth Transmission,” 40.

⁵ *DPM* 34, 35/1 (16 May 1800).

Efendi, a respected local judge, was dispatched to the house of Fāṭma Ḥanım to supervise the recording of her will. While this was not an unusual practice, the officials present for the recording of Fāṭma's case implied that she had strong ties within the network of local prominent figures.

Among the present people was a representative from the Office of the Comptroller for the Cavalry (*mukābele-i süvārī kalemī*), es-Seyyid Meḥmed Şāliḥ Efendi, son of es-Seyyid Muştafā Agha, an official of some rank responsible for the wages of six palace cavalry regiments.⁶ There were also nine male Muslims to witness the registration of her bequest. The witnesses were mainly pious individuals and military officials from Dāvud Pasha and its surrounding neighborhoods: two neighborhood imams, one boot maker, a *çavuş*, and a division chief (*bölükbaşı*). Three of the witnesses carried the preceding title of *ḥāfız* (designating someone who knows the whole Qur'an by memory), one of which was also referred to as el-Ḥāc, six were *efendis*, one was an agha, one was a *celebi*, and one was a *Molla*.⁷ All of these titles indicate the high status of the witnesses, identifying them as gentlemen belonging to either the learned elite or the military class. The last person mentioned in the record as present in the registration of the bequest was Fāṭma Ḥanım's

⁶ The *süvārī mukābelesi kalemī hulefāları* were administratives of the Office of the Comptrollers for the Cavalry assigned to each regiment to perform the detailed work of preparing muster rolls and salary vouchers. These secretaries headed their own offices, see Carter V. Findley—quoting Hammer—who states that in 1815, the number of personnel served by the Cavalry and Infantry Comptrollers' Offices was reportedly 177,000. Of these, 80,000 were Janissaries; their secretary required a staff of over 100 to service their pay records. Carter V. Findley, "Muḥāsaba," *EI2* (Brill Online, 2013). See also Yavuz Cezar, *Osmanlı Maliyesinde Bunalım*, 319.

⁷ These witnesses were Ḥāfız Meḥmed Sālim Efendi bin Ḥāfız Hüseyin Efendi who was the previous imam of the Dāvud Pasha mosque, el-Ḥāc Ḥāfız Muştafā Efendi bin Meḥmed, the second imām, Aḥmed Efendi bin Ḥamdullāh Efendi, the imām of the Ebūbekir Pasha mosque, Haḫfāf-zāde (bootmaker) Ḥāfız Meḥmed Efendi bin İsmā'il, Meḥmed Şāliḥ Efendi bin el-merḥūm Meḥmed Emīn Efendi, Ḥamdullāh Efendi bin el-merḥūm Aḥmed Efendi, Hüseyin Çavuş Agha bin Hüseyin, Ahūrī Molla Ḥasan bin Meḥmed, Bölükbaşı Halīl Çelebi bin Dervīş Meḥmed.

husband, ‘Abd’ül-ḥalīm Efendi, son of Ḥāfız Muṣṭafā Efendi, who also seemed to belong to the same group of learned men.

Of the two suits that Fāṭma Ḥanım registered on this day, the first concerned her will. The second suit, which I shall discuss later in detail, involved Fāṭma Ḥanım’s arrangement for the future assets of her husband in the event of her passing away prior to his death. The testator’s will was recorded in the first person, following her instructions regarding the distribution and devolution of the portion of her property that she chose to bequeath. As is generally the case with bequests, the first part of Fāṭma Ḥanım’s will was dedicated to her charitable donations such as alms, so she would be remembered as a woman of dignity and benevolence. In her statement, she meticulously described how one-third⁸ of her property was to be allocated to various specific charitable causes. She said:

“The one-third of my estate should be allotted as such: 200 gurushes should be distributed among the ones in need as fulfillment of my duty of alms. The valuable Qur’an that is in my possession should be considered as part of the one-third and two other Qur’ans should be bought with one hundred gurushes to be bestowed on three deserving

⁸ According to the sharī‘a regulations on inheritance, a will could only constitute one-third of one’s entire property. Wills that exceeded the one-third limit would not be distributed until after permission was obtained from the original recipients of the inheritance. Only in cases where no other heirs were present, the entire property could be passed on to someone by the testator’s will with the exception of *mīrī* property and the advanced and delayed payment of *waqf* property. There seems to be a similar rule concerning the apportioning of one’s estate in Byzantine law and customs. Evdoxios Doxiadis states, “intestate practices in the Mediterranean world also included on occasion the tradition of trimoiria, or tripartite inheritance. The origins of this practice can be traced to the Byzantine Emperor Constantine VII Porphyrogenitos, who decreed that the property of a person who had died intestate, and who had no children, should be divided into three parts, two going to those legally entitled to an inheritance and the third reserved for good works, or, as it was stated, for the ‘salvation of his soul.’ This decree survived in some customary practices as, for example, in Sifnos.... A part of this tirmoiria was reserved for the widows of the deceased, usually as lifelong usufruct. Perhaps influenced by Byzantine law, Venice had a version of trimoiria, according to which one-third of the dowry belonged to the husband after the death of his wife and the rest was divided among her children, or, if she had none, her relatives,” in *The Shackles of Modernity: Women, Property, and the Transition from the Ottoman Empire to the Greek State, 1750-1850* (Cambridge, MA: Harvard University Press, 2011), 31.

madrassa students. With one hundred gurushes, my executor should buy a suitable burial place for me in the cemetery of the Dāvud Pasha mosque. This amount should also cover the expenses for my enshrouding and funeral. One thousand five hundred gurushes should be provided to el-Ḥāc Meḥmed who will go on pilgrimage⁹ to Mecca to my cost. My executor should construct two water wells in our neighborhood with three hundred gurushes. He should spend forty gurushes on the repairs of my grave, and one hundred gurushes for the distribution of food and water to the poor. Of the possessions that constitute my estate, a large Selānīk-style carpet should be donated to the Ebūbekir mosque in our neighborhood.”¹⁰

The testator’s detailed instructions on how her bequest should be apportioned among the needy reflect the attention with which she carried out her obligations as an upright Muslim. For instance, beyond the routine provision of money, Fāṭma Ḥanım made a conscious effort to also donate her copy of the Qur’an, along with two other copies, to the deserving generation of young and pious scholars. It was customary for notables’ wills to include compensation for other devout Muslims’ pilgrimage travels. Meḥmed’s title, *el-Ḥāc*, indicates that he had completed his own duty of pilgrimage. Hence, she was sending him as a proxy to perform her obligation.

⁹ The Hanafī doctrine imposed certain mandatory limitations to a variety of bequests such as the disclaiming of consignations, debts, and payments concerning pilgrimage to the *ḥacc*, offering of alms, and payment for forgiveness of one’s sins; bequests made out of good deed, especially for those people who had no debts or heirs who decided to donate their property to those in need; bequests that were bequeathed to those of wealth, for instance, to people of knowledge and belief, people of the book who already had sizeable means; bequests that were allowable, such as bestowals made to wealthy relatives and kin; and finally bequests that were not forbidden by law but that should only be done if absolutely necessary, such as the bequeathing of property to those deemed immoral and rebellious, Bilmen, VII, 118.

¹⁰ DPM 34, 35/1 (16 May 1800).

A noticeable item in Fāṭma Ḥanım's will regarded her chief female slave, Niyāziye, who was a "müdebbere"¹¹ of Abkhazian origin. Fāṭma Ḥanım bequeathed Niyāziye's liberation stating that she should be released "forty days prior to her (Fāṭma Ḥanım's) death".¹² The testator requested, as was sanctioned by the sharī'a, that with her liberation, Niyāziye would be removed from Fāṭma Ḥanım's estate. She further requested that Niyāziye should receive 500 gurushes, as well as five cushions, ten *çatma* cushions, three broadcloth

¹¹ The term indicates a slave to whom freedom has been promised, contingent on the death of her owner. *Redhouse Lexicon*; *Tedbir* (conditional slavery) was a type of contract besides the *mükātebe* (the condition in which a slave could buy his or her own freedom), which assured the emancipation of a slave upon the death of the master. There were two major forms of *tedbir*: absolute *tedbir*, which dealt with matters concerning inheritance and the emancipation of a slave after the death of the master, and conditional *tedbir*, which held the slave responsible for accomplishing a stated condition before the death of the master in order to gain freedom. If a master was concerned about the value of his slave being greater than one-third of the worth of his whole property, and yet he still desired to manumit the slave after his death, he would link the emancipation of the slave to the completion of a certain condition. In the case that slaves did not fulfill the requirements of either the *mükātebe* or the *tedbir* contracts, they had to prove to the court that they were 'āciz (incompetent) and would request an abrogation of the stated contract. Since the conditions regulating the institution of slavery were highly controlled by the legal system, it was not possible for the owner to claim the ineffectiveness of a certain agreement. Under these circumstances, the case was bound to be taken to court. This gave slaves the option to not serve a patron if they were not content with his/her treatment of them. Hence, slaves were able to practice a rather limited sort of autonomy given that they were not legally considered to be mere commodities, Sahillioğlu, "Slaves in the Social and Economic Life of Bursa," 120.

¹² Since it would have been impossible for Fāṭma Ḥanım to know the actual date of her own death, this is a paradoxical statement commonly used as a formula for securing the manumission of one's slave so that the slave would not be reconsidered as part of the estate by the legal heirs of the deceased. The registration of a very similar case in the Üsküdār Maḥkemesi in January 1591 points to the fact that stating an earlier date than the master's death might be a practice to secure and make absolute the manumission of the slave. The Üsküdār Maḥkemesi case regarded the manumission of Behrām Subaşı's two female and one male slave forty days prior to his death. In his statement Behrām Subaşı said: "mezbûr kullarımı fevt olmazdan kırk gün mukaddem mâlımdan âzâd olsun deyu vasiyyet ettim deyicek/ I bequeathed the manumission of my aforementioned slaves to be emancipated and released from my property forty days prior to my death," in Rıfat Günelan, *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 84 Numaralı Sicil (H.999-1000/ M.1590-1591)* (İSAM Yayınları, 2010), 104, case 27 [3b-7]. The statement, namely a *tedbir*, is dependent on the death of the slave-owner. It ascertains that the slave is considered free not after the death of his or her owner but instead his or her manumission is effective as of forty days before the death of the owner. According to the hanafī jurisprudence, if the statement regarding the manumission of a slave was not immediately effective and was to commence at a established future date, it was agreed that the slave could be sold in the meantime and this evidently would annihilate the result of manumission. This is explained by Brunschvig, "On the master's death, the mudabbar, being regarded as part of his estate, is subject to the rule of the disposable third and on this rule depends the manner of his effective liberation, which is different for each school. Except according to the Hanafis, he remains in slavery if the debts of the deceased cannot be settled without selling him," R. Brunschvig, "Abd", *EI2* (Brill Online, 2013); I would like to thank Y. Hakan Erdem for sharing his knowledge on this issue. See also Y. Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800-1909* (London, 1996); Ehud R. Toledano, *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 125-130, and 162-163.

cushion seats, four pairs of duvets with their covers, one locally made bed with its mattress, three pairs of head pillows, ten pans with lids, five pots with lids, two round trays, one dessert tray, two soup pans, one wooden tray, and one washbowl with pitcher from her estate. Niyāziye's designation as the chief of Fāṭma Ḥanım's slaves —indicated by the term *re's*— might imply that she owned other slaves. Those slaves were not mentioned in her will, perhaps for the mere reason that they were considered to be the inheritance share of her legal heirs.

One of the most important elements in the record regarding Fāṭma Ḥanım's will was her appointment of es-Seyyid Meḥmed Şāliḥ Efendi as the executor and Yaḥyā-zāde es-Seyyid Sa'dullāh Efendi as the superintendent of her estate to oversee its proper division after her death.¹³ Although Fāṭma did not mention any heirs apart from her husband, 'Abd'ül-ḥalīm Efendi, her decision to appoint another person as her executor was legally impossible. In both of the records regarding Fāṭma's will, her husband was referred to as *ḡayr-ı reshīd*, a legal category defining someone who had not yet reached legal and intellectual maturity,

¹³ For his services regarding the supervision of estate distribution, the kadi or *kaşşām* would receive a fee called the *resm-i kısmet*. During the late eighteenth century, the sultans issued a number of *ḡānunnāmes* prohibiting the improper use of these fees by the kadis. The *ḡānūn-u resm-i kısmet* (undated) established that after the sum of the debts were taken out of the deceased's estate, the amount of the fee would be fifteen out of 1000 akças for the kadi. The *ḡānūn* proscribed the kadis and the *nā'ibs* from laying claim on the funds that were to be used for charity and the deceased's will. The *ḡānūn* further commanded the court officials to abstain from coercing the families of the deceased to have the estate recorded when that had not been requested by the family. At times, families of wealth would choose not to register the inheritance, hence the *kadis* and *kaşşāms* were deterred by law from forcing them to have the inheritance recorded for the sake of receiving court fees. The distribution of property would begin with the submission of the case to court. And unless the court officials actually recorded an inheritance case in the sicil, they were prohibited from demanding a fee for their assistance. If the heirs of the deceased were younger than the legal age or they were orphans, their share of the estate would be kept until they reached proper legal age. The kadis were forbidden from increasing the value of the objects in the estate to receive higher fees, in see "Kanun-u resm-i kısmet," *MTM* I, no. 1-3 (H.1331/1916), 541. According to the *ḡānunnāme* of Sultan Süleymān I in the sixteenth century, twenty out of each 1000 akças would be cut off as the kadi's payment for the distribution of the deceased's estate, see the "Kanunī Sultan Süleymān Kanunnāmesi" in Karakoç Sarkis, *Külliyāt-ı Kavânîn: kavânîn ve nizâmât ve ferâmîn ve berevât ve irâdât-ı seniyye ile muâhedât ve umûma ait mukâvelâtı muhtevidir* I, Mehmet Akif Aydın haz. (Ankara: Türk Tarih Kurumu Yayınları, 2006); see also Ahmet Akgündüz, *Osmanlı Kanunnâmeleri* IV. During the eighteenth century, the *ḡānunnāme* of Nimeṭī Efendi stated that kadis and other court officials received the same fees that they would during the late seventeenth century, namely the *resm-i kısmet* was fifteen out of 1000 akças, see "Kanun-u resm-i kısmet," 541.

someone who could not make reasonable judgments due to infirmity, or someone mentally unstable. According to the *sharīʿa*, the term *rūshd* designated the legal status (or age) upon which an individual's ability to protect and manage their property was established.¹⁴ The *sharīʿa* required that a person be able to clearly distinguish between those things that are destructive and those that are harmless in material and spiritual terms. On a much more practical level, one's father or executor would generally determine when they became an adult.¹⁵ Even if it is not possible to precisely assess the age of ʿAbd'ül-ḥalīm Efendi, his *gayr-ı reshīd* status indicates that he was not mentally stable, or he had an infirmity, or he was too young. While Fāṭma Hānım was legally entitled to act as claimant and testator, her husband could be only indirectly involved in the registration process.

A person's competence level and status of being *reshīd* were regulated by certain restrictions of the law. The term *ḥacr* indicated the restriction or interdiction of a legally incompetent person from being a witness, providing evidence, and making a contract.¹⁶ Consequently, the restrictions of *ḥacr* designated a person as *maḥcūr*, meaning that he or she was actually interdicted from performing certain deeds. These restraints also applied to marriage, since according to the *sharīʿa*, a woman was considered partially *maḥcūr* in

¹⁴ Islamic law does not specify the state of *rūshd* solely according to age. However, one's *rūshd* was not considered complete until after he or she reached puberty (*balīġ*). However an individual could be *balīġ* without attaining *reshīd* status. The law regulated that each individual's case be evaluated separately. Although the age of *rūshd* was designated as twenty after the Tanzimat reforms, this was not a consistent practice. For a brief discussion of legal maturity in earlier and later sources, see Aydın, *Türk Hukuk Tarihi*, 213-219; Cin and Akgündüz, *Türk Hukuk Tarihi*, 448-452.

¹⁵ Bilmen, VII, 268-9. Bilmen suggests that if a person who had already reached puberty were able to make conscientious decisions, he or she would be considered *reshīd*.

¹⁶ *Redhouse Lexicon*.

comparison to her husband.¹⁷ Evidently, the restrictions that concerned the evaluation of one's legal competence and maturity seem to have been determined through a case-by-case method. Fāṭma Ḥanım may have been the guardian of her husband due to his condition. Given 'Abd'ül-ḥalīm Efendi's condition, Fāṭma Ḥanım could not possibly trust him as her sole legal heir. Even if her own words were recreated in the court record, Fāṭma Ḥanım appears to be in charge of managing both her and her husband's financial affairs and wellbeing.

It seems that given the vulnerable position of 'Abd'ül-ḥalīm Efendi, choice of who would be present during the recording of Fāṭma's bequest was carefully made, possibly by the conjugal pair.¹⁸ Seeing as she did not mention any relatives or kin besides her husband in her will, Fāṭma had to make sure that her executor was a reliable person who also had exclusive knowledge of matters relating to the distribution of her finances and estate. We shall learn from the second case registered by Fāṭma (treated later in this chapter) that her choice of executor was not an arbitrary decision but a markedly informed one.

Unfortunately, it is not possible to determine the reasons for Fāṭma Ḥanım's composition of her will—this is the case in most records involving bequests. However, I speculate that it

¹⁷ For a comprehensive treatment of the terms discussed in this section, see Bilmen's section on *ḥacr*. Bilmen, VII, 269-72.

¹⁸ Islamic law regulated the actions that were to be taken prior to the division of the deceased's estate. The first step before transferring of property to heirs concerned the enshrouding and funerary preparations (*teḥīz ve tekfīn*), the cost of which was automatically taken out of the estate. The second involved the deceased's debts to persons within and outside of the family—these would be subtracted and paid from the estate. These debts, however, had to be proven (*deyn-i müsbet*) by the testator in the presence of witnesses or in the sharī'a court in the presence of the testator. The debts of the deceased could not exceed the bequest or match it in value. In the event that a person's deeds of charity and alms constituted part of the estate, these would be expunged from the total debt value. The debts that could not be paid off of the *tereke* would be removed. After the completion of these tasks, the deceased's bequest formed during their lifetime would be distributed to each legatee.

was an act to secure the possessions of the couple from the other possible legal heirs.¹⁹ Since ‘Abd’ül-ḥalīm Efendi was seemingly not in a position to manage his own financial affairs, the bequest was a precautionary act in case Fāṭma died before her husband. It is quite conceivable that the testator felt completely responsible for the upkeep of her husband and that she was the one in control of the legal and economic decisions within the scope of their marriage.

In the final section of the record, Fāṭma Ḥanım stated that she was relinquishing her husband from the 150 gurushes of her delayed dower of 200 gurushes. This decision by Fāṭma Ḥanım enabled ‘Abd’ül-ḥalīm Efendi to keep the 150 gurushes and made him liable for only fifty gurushes toward Fāṭma Ḥanım’s estate. Fāṭma Ḥanım was acting as the protector of her husband, taking care of every detail for him. In fact, she carefully instructed her executor, es-Seyyid Meḥmed Şāliḥ Efendi, and the prominent judge, Yaḥyā-zāde es-Seyyid Sa‘dullāh Efendi, to see to her husband’s care. In Fāṭma Ḥanım’s bequest, any legatees as offspring were not mentioned. Hence, it is possible that she never had any children; or if she did, they were to receive only their legal share of the inheritance. It is highly likely that this record only partially fulfilled Fāṭma Ḥanım’s will, since she did not

¹⁹ An inheritance was to be divided consistently with the sharī‘a among the legal heirs according to their level of consanguinity and proximity to the deceased. The first group were the immediate heirs that were related by blood or through marriage. The second category were the heirs designated as the patrilineal male relatives with the exclusion of all the females in the paternal line. This way, the property was ensured to remain in the family unless it had not already been distributed among the first category of heirs. The third and final category, the *sebebī*, consisted of the previously liberated slaves of the deceased who would receive what was left after the first two groups were allotted their share. When there were no heirs in the second group, the remaining estate would not be re-distributed among the first group. For example, if the deceased’s only heir in the first category was his or her mother, and there were no other relatives in the second category, the remaining amount would not be granted to the mother. It would instead be granted to the next apparent heir or group of heirs. This practice demonstrated how the idea of family was perceived as a larger entity in Ottoman culture, see Barkan, 20-22. The individual was merely a part of a larger group of associations, and hence, this extended group had a legal entitlement to the legacy of that individual. The degree of kinship determined the priority with which one received shares of the inheritance.

bequeath much to her husband or any other relative. Perhaps the apportionment of Fāṭma Ḥanım's possessions had been completed in another court record in the form of gift or sale without consideration.

***Esāme* as an Innovation in the post-1730 Era**

The second case recorded in court on the same day as the registration of Fāṭma Ḥanım's will informs us further about the particulars of role in the marriage.²⁰ In this suit, Fāṭma Ḥanım was in fact ensuring the formal entitlement of her husband, 'Abd'ül-ḥalīm Efendi, to the privilege of receiving revenues through a number of purchased slots in the muster rolls of cavalrymen regiments. Since 'Abd'ül-ḥalīm Efendi was proclaimed *ğayr-ı reshīd*, it is likely that his ownership of these infantry and cavalry regiments' pay-certificates (*esāme*) was a pre-arranged transaction by his wife, Fāṭma Ḥanım. However, it is more probable that he was considered to have restricted ability to dispose of his property, and, therefore, the couple was carefully constructing a plan that would take care of his future needs. In order to secure 'Abd'ül-ḥalīm Efendi's profit from the pay-certificates without hindrance, she registered in court that her executor, es-Seyyid Meḥmed Şāliḥ Efendi, would

²⁰ DPM 34, 35/2 (16 May 1800).

collect the disbursement(s) from the muster rolls and give the sum to Fāṭma Ḥanım to be spent on ‘Abd’ül-ḥalīm Efendi’s “designated care and necessary expenses.”²¹ She said:

es-Seyyid Meḥmed Şāliḥ Efendi received the *esāme* from when the cavalry and infantry regiments were mobilized to Egypt in 1799. After es-Seyyid Meḥmed Şāliḥ Efendi’s distribution of the disbursements according to each regiment of enlisted cavalryman was complete, he granted me the remaining 500 gurushes. I hereby assert that es-Seyyid Meḥmed Şāliḥ Efendi no longer has in his possession any residual amount.²²

The provision of the aforementioned *esāme* to ‘Abd’ül-ḥalīm Efendi seems to be a one-time transaction. That Fāṭma was assigning other men to coordinate her economic affairs, especially her will, and entrusting them with the care of her husband reveals the level of responsibility that Fāṭma Ḥanım felt towards ‘Abd’ül-ḥalīm Efendi. Perhaps their marriage was simply an agreement between their families who belonged to the same social milieu. Given the condition of ‘Abd’ül-ḥalīm, one wonders about his state at the time of the couple’s marriage. Thus, it is possible that he was not in that condition when she married him.

Though we have no access to materials that would inform us about the details of this marital arrangement, we do know that Fāṭma Ḥanım, and possibly ‘Abd’ül-ḥalīm Efendi, were efficacious. That they carefully calculated each facet of her will to be executed properly illustrates their meticulousness. Whether the choice was theirs, or hers alone, the

²¹ The expression, “umūr-ı mu‘ayyene ve maşārif-i lāzımesine harc ve şarf içün,” might also point to his old age and infirmity. It is possible that ‘Abd’ül-ḥalīm Efendi was wounded during the campaign in Egypt in 1799 and had actually earned the *esāme*, Ibid.

²² Ibid.

selection of es-Seyyid Meḥmed Şālîḥ Efendi, son of es-Seyyid Muştafâ Agha, as executor was a strategic maneuver. Given that es-Seyyid Meḥmed Şālîḥ Efendi was a Comptroller of the Cavalry, whose primary occupation was to manage the disbursement and distribution of the stipends of cavalymen regiments, he appears to be a powerful man who had the authority to facilitate the proper delivery of Fâtma Ḥanım's recompense. The significance of her executor is confirmed by the nineteenth-century chronicler Şânî-zâde Meḥmed 'Atâ'ullâh Efendi, who reported on es-Seyyid Meḥmed Şālîḥ Efendi's promotion to his present position in July 1821.²³

In the post-1730 era, following the Patrona Ḥalîl rebellion, the state had taken a different stance regarding its previous policy of reducing the number of enlisted soldiers in the corps to lessen the level of pressure on the treasury.²⁴ It was during this period that the selling or bartering of pay-coupons, called *esâme*, became allowable and widespread. These coupons were paid to members of the janissary and cavalry regiments on a monthly basis in lieu of their daily rations. Beginning with the seventeenth century, the slots that became vacant (*maḥlûl esâme*)²⁵ due to the death or retirement of soldiers would be sold to

²³ Şânî-zâde stated that he was promoted from the position of "*muḳābele-yi süvārî halîfası*" in H.1214/1799-1800 to the position of Comptroller of the Cavalry in Tepedelen. The exact date is 10 Şevvâl 1236 (11 July 1821 Wednesday). Şânî-zâde Meḥmed 'Atâ'ullâh Efendi, *Şânî-zâde târihi* [*'Osmânî Tarihi (1223-1237/1808-1821)*] hazırlayan Ziya Yılmaz (İstanbul: Çamlıca, 2008), 1255-56.

²⁴ In his comprehensive article on the janissaries, Kafadar explores the practice of the selling and buying of *esâmes* in the evolution of the corps: Cemal Kafadar, "Yeniçeriler," *DBİA VII* (İstanbul: Tarih Vakfı Yurt Yayınları, 1995), 472-76. See also Ahmet Tabakoğlu, *Gerileme Dönemine Girerken Osmanlı Maliyesi* (İstanbul: Dergah Yayınları, 1985), 122-128. The system of *eshâm* is thoroughly explained in Yavuz Cezar, *Osmanlı Maliyesinde Bunalım*, 79-85, 102-109, and 168-173.

²⁵ On this issue see Yavuz Cezar, 267-271. In the eighteenth century, Mustafa III's (1757-74) attempt to eradicate the usurpation of soldiers' pay-roll slots by unrelated persons revealed that those who exploited the market in *esâme* even included members of the ulema and bureaucratic corps and the royal household. For instance in 1778 the *tereke* (estate inventory) of Kālâfât Meḥmed Pasha, a Janissary agha-turned-Grand Vizier, contained *esâmes* worth 12,700 akças per day, in Özcan, "Esâme", 356.

individuals who were not related to the corps.²⁶ In the second half of the eighteenth century, d'Ohsson observed that *esāme* deeds were freely bartered and that important state officials coerced regiment officers, buying numerous title deeds for the men in their service.²⁷ The chronicler Ahmed Cāvid, in his commentary regarding the deterioration of the practice of bartering *esāmes* during Selim III's reign (1789-1807), made a distinction between original and recent *esāme* owners by designating non-military possessors of the slots as "mücedded".²⁸

Although the state attempted to control improbable sales of these certificates, a lawsuit regarding an *esāme* sale in 1800 validates that these attempts did not bring conclusive solutions. In the case recorded on May 24, 1800, es-Seyyid Muṣṭafā Agha, who was a resident of the Emīr Buhārī neighborhood, stated that on July 5, 1799 he had allotted the 54-

²⁶ The Janissaries' selling of *esāmes* was initially endorsed by Mahmud I (1730-54): Abdülkadir Özcan, "Esāme", *TDVİA* 11 (İstanbul: İSAM, 1995), 355-56. Aksan has pointed to the adversity caused by the issuance of such a major decision during the thirty years of peace when there were hardly any new members being recruited or instructed in the corps, in Aksan, "Selim III," *EI2* (Brill Online: 2012).

²⁷ When *esāme* owners passed away, their legatees inherited the *esāmes* and the monthly wages assigned to them. Hence, even if there were losses due to deaths in the military, the number of cavalymen did not decrease, in fact, they actually continued to expand: see d'Ohsson, *Tableau Général de l'empire Othoman*, 336-339. Kafadar examined the process of the permeation of the Janissaries in artisanal and service-related trades, which he labeled as 'esnafization' of the Janissary corps, pointing out the impossibility of knowing the exact numbers of the Janissaries especially after 1730 due to the control of *esāme* records by the Zonanas, a Jewish family who had purchased the position of paymaster of the corps and kept the records in their possession in spite of fierce pressures from a number of state officials, see Kafadar, "Janissaries and Other Riffraff of Ottoman İstanbul: Rebels Without a Cause?" 117-118.

²⁸ Ahmed Cāvid, *Hadika-i Vekāyî*, ed. Adnan Baycar (Ankara: Türk Tarih Kurumu, 1998), 37-39. See also Ahmed Vâsıf's commentary on the negative effects of this practice in the years 1752-1774, in Mücteba İlgürel, Ahmed Vâsıf Efendi- *Mehâsinü'l-Âsâr ve Hakâikü'l-Ahbâr* (İstanbul: Edebiyat Fakültesi Basımevi, 1978), 66-67. Although the practice of selling the *esāme* functioned as a "pseudo" government bond allowing the state to better manage its internal borrowing, the increasing number of non-military *esāme* holders caused by the uncontrollable bartering of *esāmes* among individuals had begun to take its toll on the military order and the Public Treasury (*beyt'ül-māl*), Kafadar, "Yeniçeriler," 474. On the internal borrowing policy of the state see Yavuz Cezar, *Osmanlı Maliyesinde Bunalım*, 79-84 and especially 244-247; idem, "Osmanlı Mali Tarihinde 'Esham' Uygulamasının İlk Dönemlerine İlişkin Bazı Önemli ve Örnek Belgeler," *TB* 12 (1980), 128-129 and 130-132; Bruce McGowan, "The Age of Ayans, 1699-1812," eds. Halil İnalcık and Donald Quataert, *An Economic and Social History of the Ottoman Empire*, 637-743; Engin Deniz Akarlı, "Ottoman Historiography," *MESAB* 30 (1996), 33-37. See also Mehmet Genç, "Osmanlı Maliyesinde Malikâne Sistemi", 231-291; idem., "Esham", *TDVİA* 2 (İstanbul, 1995), 376-380.

aķça *esāme* that was granted to him as a *çavuş* in the seventh squadron of the infantry regiment to Mehmed Agha.²⁹ Muştafā Agha clarified that his name in the payroll was recorded as ‘Alī Muştafā of Zāgra-ı ‘Atīķ, for his service on a campaign in that region. Muştafā Agha stated that he gave Mehmed Agha his salary certificate and received a sum of 1300 gurushes in return. That individuals still registered the sale of *esāme* in court during this period demonstrates the sultan’s lack of complete success in regulating and limiting the barter of *esāmes*.

If we return to Fāţma and her husband’s case, it is clear that the registration of such a will and the details regarding ‘Abd’ül-ħalīm’s future economic security indicate this couple’s farsightedness. There were many variations to the exchange of possessions between spouses, and bequests were one way of strategizing on their behalf to avoid other legal heirs from claiming parts of their shared property. In the case of Fāţma Hānım, given the condition of her husband, she had to be the one acting on their behalf. Perhaps this aspect motivated her to be as up-to-date on the novel practices and popular innovations of the period—her *esāme*-related case is an indication of this observation.

²⁹ The two parties had the case recorded in the ledger about a year after the actual sale had taken place, see *DPM* 34, 28/4 (24 May 1800).

***Gedik* as Innovation and Women's Access to Trade**

During the same period, another innovation in which women were active participants was the institution of *gedik*. On March 28, 1800, Kālāycı Hüseyn Oṭabāşı, a resident of the Molla Gürānī neighborhood, presented his suit regarding Şerīfe Hānīfe Hātūn concerning certification of the sale that took place between them.³⁰ Şerīfe Hānīfe was not present in court and was represented by her agent, Duḥānī Halīl Agha. In his testimony, Hüseyn stated that he had sold the implements and use-rights, namely the *gedik*, preserved in the coppersmith's shop located near the madrasa gate of the Dāvud Pasha Mosque to Şerīfe Hānīfe. As in most of the cases regarding the sale of *gedik* licenses, the claimant emphasized that in common parlance the implements and tools extant in an artisan shop was referred to by the *eşnāf*³¹ (groups of craftsmen and traders) as *gedik*. Among the contents that were sold were two bellows, one large copper tray, a plate, four pliers, and other necessary tools, which Şerīfe Hānīfe purchased for one hundred gurushes. The claimant concluded his statement by granting all his use rights to Şerīfe Hānīfe and stating that he no longer had any affiliation with the implements (*gedik*) of that coppersmith's shop.

This case was one of at least ten *gedik*-related cases that involved women in a single Dāvud Pasha court register book dated 1800. Yet another innovation that emerged during the seventeenth century, but became widespread only from the early-eighteenth century onwards, was *gedik*, which ascribed exclusive tenure rights to master craftsmen to practice their respective trades and gave them legal entitlement to use the implements and premises

³⁰ DPM 34, 29/1 (28 March 1800).

³¹ Yi identifies *eşnāf* as artisans and menial workers in general who often doubled as shopkeepers, Yi, 42.

specifically allocated to that trade group.³² During this period, guild masters considered *gedik* as a license guaranteeing their monopoly in a specific craft or service-related trade. Irrespective of the multiple meanings and functions attributed to the concept, the dominant view contends that by the mid- to late-eighteenth century, *gedik* was implemented by the state to protect guild members from the destabilizing pursuits of independent craftsmen and tradesmen who had become involved in these crafts and trades. Due to growing market pressures and fiscal crises in the late-eighteenth century (1770-1810), the state's policies regarding waqfs had to be readjusted. These changing procedures directly affected the long-standing connection between waqfs and craftsmen guilds. Hence, guilds sought for more of a prospect that enabled the continuity of their operation in the market place, while trying to maintain certain traditional aspects intrinsic to their existence. The guilds achieved this by executing self-government in their supervision and organization.³³ The *gedik* was essentially an effort to make guild boundaries less permeable, preventing outsiders from encroaching on the guilds.

The term *gedik*, literally denoting 'slot' or 'gap', came to mean the implements and tools of a craftsman, the contents of a workshop, and the entirety of the things needed to

³² Akarlı states "Gedik acquired a multitude of meanings representing various things and rights to which the artisans and traders of Istanbul became legally entitled. At first, it legally meant the capital assets necessary to practice a trade. By 1840, gedik ownership also implied having the skills that qualified a person as a master in a specific trade, being a senior partner in a group of artisans or traders that had the exclusive right to practice the trade, and entitlement to the use-right of a work premise associated with the same group" in Akarlı, "Gedik: A Bundle of Rights," 170; Ahmet Kal'a, "Gediklerin Doğuşu ve Gedikli Esnaf," *Türk Dünyası Araştırmaları* 67 (1990): 181-187. For an overview of the guilds and their mode of operation in the first half of the nineteenth century, see Donald Quataert, "The Age of Reforms," *An Economic and Social History of the Ottoman Empire volume II*, 895-898.

³³ In Istanbul, *gedik* confirmed the monopoly of master craftsmen over the production of his item or his part in the production process of a certain item. For the issue of monopolizing impact of *gedik* see Akarlı, "Gedik: A Bundle of Rights", 166-200. On traditionalism and transformation in the organization and operation of seventeenth-century Istanbul guilds see Yi, *Guild Dynamics*, 148-160.

practice a specific trade.³⁴ The emergence of *gedik* as such has been traced to 1727-28³⁵ in the sources regarding the activity of guilds and other spheres of production in different cities of the imperial territories.³⁶ The *gedik* license, another innovation in this period, certified that master craftsmen had full legal ownership of the implements in their work areas, however, it did not secure a right to the possession of the workshop.³⁷ This license, which was transferable from father to son by way of inheritance, made it possible for craftsmen to move their production anywhere they desired.³⁸ The transfer of a *gedik* meant the transfer of its use-rights as well as the implements and equipment that were in it. In terms of the transfer

³⁴ Onur Yıldırım, "Transformation of the Craft Guilds in İstanbul (1650-1860)," *Islamic Studies* 40:1 (2001), 52; Eunjeong Yi identifies two artisanal groups, namely the guilds of water-carriers with and without mounts, who used *gedik* in the context of craft and services as early as 1630. Yi assessed that in 1630 the registration ledgers of this trade were used in order to block outsiders from infiltrating into this guild and functioned as a registry of mastership and work premise. In the 1640 *narh defteri*, Yi has observed the water-carriers were mentioned as the only guild to have *gediks*, in Eunjeong Yi, *Guild Dynamics*, 155-157.

³⁵ Onur Yıldırım's article exploring the consistency and transformation of guilds as well as the historiography of the subject matter contends that the term *gedik* bore a different meaning prior to 1726. He suggests that a document regarding the grievances of printed-fabric maker craftsmen in Vezir Han dated H.1198/1726 published by Osman Nuri Ergin is indicative of *gedik* designating the actual space in which an artisanal craft is being executed: Onur Yıldırım, "Osmanlı Esnafında Uyum ve Dönüşüm," *TB* 83 (Kış 1999/2000): 146-175. For the original document see also Ergin, *Mecelle*, 656.

³⁶ Akarlı traces the evolution of *gedik* from a term designating the implements in a master-craftsman's shop to the monopoly of usufruct rights to the implements, suggesting that the *gedik* acquired this second signification by becoming a protective mechanism for guild members against the increase in the number of unskilled laborers outside of guilds. The *gedik* license could be viewed as an extension of this precautionary measure, which enabled the recording of the implements and tools to one's own name. Hence, the institutionalization of the *gedik* in the second half of the eighteenth century allowed for guild-member master craftsmen to attain monopoly of rights by way of a title deed over their instruments. For the legal transformation of the entity of *gedik* see Akarlı, "Gedik: Implements, Mastership, Shop Usufruct, and Monopoly among İstanbul Artisans, 1750-1850," *Wissenschaftskolleg Berlin Jahrbuch* (1986): 223-232. On the case of Bursa see Suraiya Faroqhi, "Ottoman Guilds in the late eighteenth century: The Bursa Case," in *Making a Living in the Ottoman Lands, 1480 to 1820* (İstanbul: The Isis Press, 1995), 98-102.

³⁷ Faroqhi has suggested that the right to exercise a certain craft in a specified locale could be inherited, or sold only to fellow guildsmen, the latter whom to some extent, were protected against interference from outsiders: Faroqhi, "Purchasing Guild- and Craft-based Offices in the Ottoman Central Lands," *Turcica*, 39 (2007): 123-146.

³⁸ Özer Ergenç, "Osmanlı Şehrinde Esnaf Örgütlerinin Fizik Yapıya Etkileri," *Türkiye'nin Sosyal ve Ekonomik Tarihi (1071-1920)*, Halil İnalcık ve Osman Okyar (der.) (Ankara: Meteksan Limited, 1980), 108; Yıldırım, "Osmanlı Esnafında Uyum ve Dönüşüm". On the widespread practice of the transfer of *gedik* through inheritance on Ottoman territories in the Balkans see Nikolay Todorov, *The Balkan City* (Seattle: University of Washington Press, 1983), 114.

of *gediks* through inheritance, Akarlı observed that different artisanal groups practiced different customs and these customs determined which heirs would inherit the *gedik* license. For instance, craftsmen of certain guilds would only consent to the transfer of property from father to son, while other craftsmen groups would allow the inheritance of *gedik* by daughters as well.³⁹

My sources clearly showed that women were active agents in the *gedik* system, and their involvement was not limited to inheritance. Although waqfs and inheritance laws made it possible for women to independently own and manage property, I explored other means through which women attained possession of shops, public baths, houses, land, and other forms of real estate. In a survey of the engagement of women in Istanbul's urban market, it was suggested that during the second half of the nineteenth century women's input in production increased as the guilds lost their monopoly over manufacturing.⁴⁰ In a multitude of court records, some of which will be mentioned here, I observed that even earlier than the latter half of the nineteenth century women's input in production was in effect. For instance, we see that they invested in buying *gedik* licenses from master craftsmen for the use-rights of work premises and implements in order to lease them to either the same craftsmen or other prospective artisans. An extensive study focusing on 257 estate records of seventeenth-century Istanbul showed that in estates belonging to women of the military-bureaucratic elite, 1.99% concerned trading goods and capital, 0.01% of which was tools.⁴¹ In my analysis of

³⁹ Akarlı, "Gedik: A Bundle of Rights," 179.

⁴⁰ Zarinebaf-Shahr, "The Role of Women in the Urban Economy of Istanbul," 148; The author further suggested that middle and upper-middle class women were very much interested in urban residential and commercial real estate during the period under scrutiny.

⁴¹ Said Öztürk, *Askeri Kassama Ait Onyedinci Asır İstanbul Tereke Defterleri*.

264 estate records (*muḥallefāt*)⁴² from late-eighteenth and early-nineteenth century, nineteen mentioned either one or multiple *gediks*.⁴³ Of those nineteen estates owned by men, only one contained a *gedik* auctioned and sold to a woman, due to the deceased male's lack of heirs. The fact that only one out of nineteen entries mentioned women's ownership of a *gedik* indicates that the circumstances were not much different than those in the seventeenth century.

The only instance of a woman buying the *gedik* rights concerned the estate inventory of Meḥmed, son of 'Abdullāh, a master craftsman who belonged to the seventy-first regiment of the janissaries and owned a coffee shop *gedik* near Alaca Masjid and a barbershop *gedik* bordering a public fountain on one side and the aforementioned coffee shop on the other.⁴⁴ The implements and use-rights of the barbershop *gedik* were sold in an auction to a certain Rāziye Ḥātūn for a sum of 2500 gurushes. The coffee shop *gedik* was put up for sale.

Although I have not encountered any cases in the sicils regarding the direct engagement of women in trade as part of a guild, it was clear that their possession of a *gedik* license enabled them partial access to these networks.⁴⁵ The case concerning Şāliḥa Ḥātūn's annulment and release of her *gedik* license demonstrates women's engagement in the *gedik*

⁴² In Islamic inheritance law, the term signifies the property left behind by the deceased, see Tahsin Özcan, "Muhallefāt," *TDVİA* 30 (1988x), 406-407.

⁴³ I examined 264 cases of inheritance deeds in BOA, *D.BŞM.MHF*, inclusive of the years H.1196-1250/ 1781-1835 A.D. Özcan has assessed that there are 1381 ledgers present in this archive, see Özcan, 407.

⁴⁴ BOA, *D.BŞM.MHF* d. 13409-11 (H.1242/1826 A.D.).

⁴⁵ Akarlı has argued that even if the rights and networks obtained had precedents in Ottoman legal and urban culture, their union under the umbrella of a single lawful entity which applied to the greater part of artisans and craftsmen was a development unique to the period of 1750-1840, in Akarlı, "Gedik: A Bundle of Rights," 171.

system.⁴⁶ On May 21, 1800, Şāliḥa Ḥātūn's father and proxy in court, Muştafā Agha, stated that eight months ago his daughter had sold the implements and use-rights of the tinsmith *gedik* that she owned to Ḳalāyıcı Ḥasan Uşta. It was recorded that Şāliḥa received 150 gurushes for the sale of the *gedik* license. The same Ḳalāyıcı Ḥasan Uşta, a resident of the İbrāḥīm Pasha neighborhood in Silivriḳapūsı, was the claimant in another case listed in the same register.⁴⁷ In his testimony Ḥasan Uşta stated that eight months earlier he had sold his own equipment and extant utensils in the tinsmith shop *gedik* to Ḥüseyin Uşta. The shop's contents included a chest of drawers, a cupboard, four pairs of tongs, a pair of bellows, some sulphate of ammonia, one plate, five iron pliers, a stake, a hammer, and one pair of scissors among other small tools. Ḥüseyin Uşta paid 330 gurushes for all of the items in the tinsmith shop.

Another case from the same court register —the case involving the *gedik* license transaction of Rābi'a, daughter of Velīeddīn —demonstrated women's ability to partake in business deals.⁴⁸ It was Ḳalāyıcı İsmā'īl Beşe, a resident of Dāvud Pasha, who stated in court that Rābi'a had bought from him the *gedik* implements and the use-right of the tinsmith shop located in the Sancakdār Hayreddīn neighborhood for 200 gurushes. Among the equipment sold were one pair of bellows, some sulphate of ammonia, a plate, one large tray, one stake, and other utensils. Rābi'a, who had the sole right to ownership but did not have the craftsmen at her disposal, had chosen to rent out the *gedik* to İsmā'īl Beşe for 100 paras per month.

⁴⁶ DPM 34, 37/6 (19 April 1800).

⁴⁷ DPM 34, 37/5 (19 April 1800).

⁴⁸ DPM 34, 41/1 (2 June 1800).

While there were many routine cases similar to ‘Āyşe Hātūn’s buying a shop’s utensils and tools for 250 gurushes from her husband⁴⁹, the case of Fāṭma particularly illustrates the extent to which women’s business transactions allowed them access to different sites and networks and to an expanded sphere of activity.⁵⁰ On August 16, 1829, İksirci Serkiz, veled-i Ga‘dūk, a *zimmī* potion-maker, who was a resident of the Agha neighborhood near Çukūr Çeşme, presented his case regarding Fāṭma Hātūn. According to Serkiz, Fāṭma had in her possession a legal voucher, which stated the sums that she had lent to him. Correspondingly, in addition to the 1,700 gurushes that Serkiz had borrowed from Fāṭma, she had lent him 756 gurushes from her property. Unable to pay the full sum of 2,456 gurushes, Serkiz stated that he had produced only 623 gurushes in cash, which he paid to Fāṭma. As for the rest of his debt in the amount of 1,833 gurushes, Serkiz traded in the implements of his potion shop *gedik*, which had a total value of 1,800 gurushes. Fāṭma, whose testimony is recorded only during the final part of the suit stated that after the barter was in effect, she had rented the *gedik* to Serkiz *zimmī*, who was to pay her twenty-one gurushes per month for use-right and implements of the *gedik*.

By obtaining a legal voucher to certify her loan to Serkiz, Fāṭma avoided the possible risk of losing her money. The voucher facilitated the collection of the debt from him. Even if Serkiz had not initially proposed his potion shop *gedik* as collateral for his loan, Fāṭma was probably already aware of this possibility. Fāṭma spoke for herself in court, and she had enough knowledge to independently manage the deal she made with Serkiz. In return for the overdue sums that Serkiz was unable to pay her, she accepted the *gedik* rights to the potion

⁴⁹ DPM 34, 53/1 (29 June 1800).

⁵⁰ DPM 87, 37/6 (16 August 1829).

shop. Fāṭma's administration of her own business transactions also enabled her to interact within a network to which she probably would not have direct access under different circumstances. Serkiz was a male and a non-Muslim, and the case regarding the transfer of the *gedik* license brought him and Fāṭma together. The *gedik* transactions that were peculiar to the late-eighteenth century allowed women who belonged to the middle and upper-middle classes to be more knowledgeable about and visible in the urban public sphere.

The Deferred Dower in Estate Records

In addition to innovations, it was the rules and practices that enjoyed years of continuity that enabled women to defend their interests. Women's participation in and manipulation of these practices helped prolong them. As explored in the previous chapter, the dower was one of the most relevant of such practices and is considered to be the most important and consistent form of property transmission for women. In Ottoman society, the dower appears as a standardized concept in the lives of women, since each form of marriage contract had to include it in order to formalize the marriage. In this section, I assess the average amounts of dower by year to contextualize its place in property transmission practices according to a sample of 264 estate records registered between H.1242 (1826-27 A.D.) and H.1250 (1833-34 A.D.).

The estate records, or probate inventories, are registers that systematically listed the immovable and movable property as well as the donations, alms, waqfs, debts, and loans of the deceased and indicated who would administer their allotment among family, kin and other legal heirs.⁵¹ The estate records that I analyzed were mainly of individuals who did not belong solely to the military class, and, therefore, were not recorded in the court records dealing with the estate of this class. Instead, they belonged to those individuals who were either long-time residents of the capital or who had come to that city for work and had died in Istanbul. Some of the deceased had family and non-blood related kin living elsewhere; some had no legal heirs. It is perhaps for this reason that my selected sample was preserved in the archives of the Prime Ministry, in the Bāb-ı Defterî collection.⁵² This particular resource was useful in drawing comparative conclusions between the economic and social positions of benefactors who were married and had children and benefactors who were single and or widows without heirs or offspring, or who were married without children at the time of their death.

⁵¹ Probate inventories of the deceased would be recorded with the help of the *ḳassam* into the tereke registers or *ḳassam* registers or they would be registered in separate books called *muḥallefāt*. The *ḳassam* was a legal state official, a trustee, who was responsible for dividing a deceased person's estate among the heirs, Halil Cin, *Eski ve Yeni Türk Hukukunda Tarım Arazilerinin Miras Yoluyla İntikali* (Ankara: 1979), 54-55; Ömer Lütfi Barkan, "Türk Toprak Hukuku Tarihinde Tanzimat ve 1278 (1858) Tarihli Arazi Kanunnâmesi," *Tanzimat I* (İstanbul: 1940), 396; see also Şefika Kurnaz, *Cumhuriyet Öncesinde Türk Kadını 1839-1923* (İstanbul: 1997), 51-52; Cengiz Orhonlu, "*Ḳassam*," *EI2* (Brill Online, 2012).

⁵² Özcan explains that in Istanbul, apart from the court records that contained the estate inventories of the military class and of those who were not affiliated with the military, the Prime Ministry archives also contained a large number of estate inventories under the *Bāb-ı Defterî Başmuḥasebe Kalemî* and *Muḥallefāt Halîfeliği Kalemî*, Özcan, 407. It has been noted by both Özcan and Fatma Müge Göçek that the estate inventories of those individuals without any legal heirs could also be registered in the *Başmuḥasebe Muḥallefāt Halîfeliği* archives. However, my assessment of 264 documents has shown that the estate of those individuals with legal heirs and children were also included in this archive. Compare Fatma Müge Göçek, *Fatma Müge Göçek*, "*Muḥallefāt*," *EI2* (Brill Online, 2012).

Of the 264 records, 198 concerned the estates of men, and sixty-six concerned those of women. The records generally consisted of the probate inventories of men and women who belonged to the middle- and upper-middle class (see Tables 4.1 to 4.3). The majority of the deceased males belonged to different ranks in groups of *eşnāf* appearing to hold at least one *gedik* license if not more and owning their shops. Males were generally referred to by the titles of *agha*, *efendi*, *pasha*, *beğ* (Table 4.1).⁵³ The males who belonged to the Muslim learned elite were generally distinguished by either their status defining titles such as *efendi* or by their profession-defining ones such as *müderris*, *imam*, *hāfız*. Men who were affiliated with the juridical and military circles were distinguished by their ranks such as *kadi*, *nā'ib*, and *çavuş*, *sipāhi*, *silāhdār* respectively (see Table 4.3). In the entirety of the cases, only eight men were distinguished as *seyyid* and six women as *şerīfe*.

Table 4.1 Titles and Designations of Males in the Sample of 264 Estate Records

Title	Amount	Percentage
Agha	35	17.7
Efendi	18	9.1
Pasha	4	2.1
Seyyid	8	4.1
Beğ	1	0.5

⁵³ For a reappraisal of these honorific titles see Güçlü Tülüveli, "Honorific Titles in Ottoman Parlance: A Reevaluation," *IJTS* 11 (2005): 21-23; Ergene and Berker's article on inheritance strategies and the devolution of wealth across generations also addresses the issue of honorific titles within the context of eighteenth-century Kastamonu, Boğaç A. Ergene and Ali Berker, "Inheritance and Intergenerational Wealth Transmission in Eighteenth-Century Ottoman Kastamonu: An Empirical Investigation," *JFH* 39:1 (2009), in particular p. 45 fn. 12 and 13.

Table 4.2 Titles and Designations Of Females in the Sample of 264 Estate Records

Title	Amount	Percentage
Şerīfe	6	9.1
Ḥanım	2	3.1
Hātūn (prior to father's name)	17	25.8

In the estate records, forty-seven women are registered without any distinctive titles and were generally referred to in the form of so-and-so, daughter of ‘Abdullāh. There were seventeen instances in which women retained the honorific title of *ḥātūn* prior to their father's name such as ‘Āyşe Ḥātūn, daughter of ‘Abdullāh, which illustrated their comparably higher status (Table 4.2). There were only two women who carried the honorific title of *Ḥanım*, which distinguished them from others in terms of their wealth, social prestige, and connections. The twenty-two *zimmī* males recorded in the registers belonged to groups of *eşnāf*, tradesmen and artisans, and were referred to by the definition of their professions such as, *uṣṭā*, and *kethüidā*.

Table 4.3 The Titles and Designations of Males in the Sample of 264 Estate Records

Profession	Amount	Percentage
Tradesmen and artisans (<i>ūṣṭā</i> , <i>kethūdā</i> , <i>gedik</i> and shop owner)	70	35.5
Ulema and other learned elite (<i>müderris</i> , <i>imām</i> , <i>ḥāfız</i>)	34	12.9
Legal bureaucracy (<i>kadis</i> , deputies)	4	2.1
Military officials (<i>çavuş</i> , <i>sipāhi</i> , <i>silāhdār</i>)	6	3.1

In the 264 estate records that were surveyed, the majority of men—sixty-three percent—were not married at the time of their death. This high percentage seems to indicate that these men either had not reached a certain age, or lived longer than their wives, or their professions kept them from considering a life that included marriage. In the case of women, 50% were not married at the time of their death. One woman, Şerīfe ‘Āyşe Hanım, was separated and living away from her husband, es-Seyyid Meḥmed ‘Ārif Agha. After her death, Meḥmed Ārif Agha received half of the total of her estate (Table 4.4).⁵⁴

⁵⁴ BOA, *D.BŞM.MHF*.d. 13520-1 (H. 1249/ 1834).

Table 4.4 Marital Status of Men and Women in the Sample of 264 Estate Records

Status	Men	Percentage	Women	Percentage
Married	73	36.9	33	50
Married twice	0	0	2	6.1
Separated	0	0	1	0.9
Widowed	0	0	4	6.1
Polygynous	3	2.8	NA	NA
Had children	35	47.9	13	39.4
Spouse away when deceased	8	11	3	9.1

Some of the estates of individuals who had been married contained the amount of the promised deferred dower. Of the 106 entries of married men and women, sixty mentioned the amount of dower. Accordingly, the average dower amount was 353.7 gurushes (see Table 4.5 and Table 4.7 for a comparison of the average deferred dower amounts in contemporaneous court records and estate records). The data collected from both the registers and the court records indicates that this average was significantly higher than the average in three other courts in the city. It was only in the court records from 1832 to 34 that the average deferred dower value came close to the average deferred dower values indicated in the estate records. Although the number and choice of the dower cases included in the estate records cannot possibly equate to the range of cases registered in the court records

given this limited sampling, these cases are representative for the period in question. For instance, the estate records for the years 1816-17 and 1832-33 did not include any entries with dower values; the records for 1782 and 1834 each included only one case that reported the dower value. Consequently, the lowest and the highest values of average deferred dower correspond to these dates in the estate records. The increase in value between the dates 1826 and 1831 also corresponds to the increase in the number of registered divorce cases and the increase in the dower values in the court records (refer to Figures 3.1 and 2.5). Another important point is that the data regarding average deferred dower amounts per court showed that the Dāvud Pasha court recorded the lowest values, which suggests that the attendees of this court had comparably lower means. On the other hand, except for the years 1806-07 and 1829-33, the İstanbul Bāb court had the highest deferred dower average compared to the other two courts.

Table 4.5 Average Dower Values in Gurushes Recorded in Divorce Suits in İstanbul Bāb, Ahī Çelebi, and Dāvud Pasha Courts and in the Estate Records

Year	Number of Cases*	İstanbul Bāb	Ahī Çelebi	Dāvud Pasha	Muḥallefāt	Average dower
1782-83	257sc.-1m.	197.2	62	15.1	500	193.6
1789-90	131sc.-1m.	54.8	32.5	39.1	250	94.1
1794-95	184sc.-0m.	55.5	27.9	27.4	0	36.9

Table 4.5 (continued)

1798-1801	191sc.-0m.	59.5	49.7	43.4	0	50.9
1806-07	490sc.-0m.	62.9	73.4	57.2	0	64.5
1811-13	253sc.-0m.	71.6	63	60.8	0	65.1
1821-23	140sc.-0m.	194.1	105.6	75.8	0	125.2
1826-27	29m.	NA	NA	NA	387.7	387.7
1829-31	346sc.-15m.	132.3	167.1	97.2	142.6	134.8
1830-33	409sc.-15m.	121	174.1	101.4	332.6	182.3
1832-34	504sc.-1m.	373.6	226.5	93.4	2780	868.4

*The number of cases includes both the sicils (sc.) of the three courts and the *muḥallefāt* (m.)

The estate records are significant in terms of the quantitative data they present on the relationship between one's entire estate and the amount of dower determined at the time of marriage. As can be viewed in Table 4.5, my sample of estate records represents a relatively better-off segment of the population in the city. I analyzed the dower values, in particular, to see whether there was a correlation between these two quantities. A significant correlation would imply that the dower value was determined and fixed according to the male's entire assets. In the estate records, the ratio of the dower to the individuals' entire estate varied

from a range of 4% to 89%, which illustrates that there was not a meaningful correlation between them. There were twenty-six entries with less than a 20% ratio, twelve entries with a ratio between 20 and 40%, ten entries with a ratio between 40 and 60%, and five entries with ratios above 60%. The majority of the ratios of dower amount to entire estate accumulated around 20%; the minority of ratios was above 60%. These results do not necessarily indicate a general correlation, however, they show the significance of the dower for both parties in marriage. In the estate records, the dower constituted only 1.35% of the total amount of property that was registered. The fact that the average dower value was considerably small was due to the large number of single males (see Table 4.4). The ratio of the total value of the estates to that of deferred dowers was 311,877 to 21,224, which is approximately seven percent, with respect to married men.

The figure below indicates that the majority (81%) of the dower amounts recorded in the probate registers were below 500 gurushes, 12% were between the range of 500 and 1,000, and 6% were in the range of one thousand and five thousand gurushes. These figures reflect that individuals with comparably lower means comprised the majority of the 106 married cases (see Table 4.6):

Table 4.6 Deferred Dower Values Registered in the Sample of 264 Estate Records

Dower value in gurushes	Amount of cases
0-500	49
500-1000	7
1000-5000	4

Table 4.7 Average Deferred Dower Values in Gurushes Registered by Year in the Estate Records

Year	Average Dower
1781-82	500
1793-95	250
1816-17	n/a
1826-27	387.7
1828-29	142.6
1830-31	332.6
1832-33	n/a
1833-34	2780
1835	585.5

Inheritance Deeds and Property Transmission Strategies

Analyzing the sample of estate records enables the assessment of property transmission and distribution practices. As shown in the following record, women were legal subjects—testators and legatees—who shaped, controlled, and manipulated both their legacies and inheritances.⁵⁵ On January 5, 1794, Meḥmed Şādık registered a petition

⁵⁵ For sources regarding inheritance laws in Islam see Martha Mundy, “The Family Inheritance and Islam: A Re-examination of the Sociology of Fara’id Law,” *Islamic Law: Social and Historical Contexts*, ed. Aziz al-Azmeh

addressed to the sultan regarding the confiscation of the estate of Muṣṭafā Agha, the Chief Superintendent of the Kılıç ‘Alī Pasha Hammam.⁵⁶ According to Meḥmed Şādık, he was the son of the deceased’s paternal aunt’s son. In his statement, Meḥmed Şādık suggested that the deceased’s moveable and immoveable effects were confiscated by the Public Treasury due to a misperception concerning his lack of heirs.⁵⁷ He also mentioned that he was poor and in need of his due share for the continuity of his livelihood. Consequently, Meḥmed Şādık demanded the effects to be released from the Public Treasury and distributed among the appropriate heirs. A second petition by es-Seyyid Ḥalīl Ḥamīd, who also claimed to be a relative of the deceased’s, requested the re-evaluation of the confiscation and the return of the effects to the deserving heirs.⁵⁸ In his testimony, Ḥalīl Ḥamīd stated that it was the Molla of Galaṭa and the chief inspector (*başbāḳīkulu*)⁵⁹, who both attested to the deceased’s not having any legal heirs.

There was a third petition, two days following the death of Muṣṭafā Agha, by his wife Ḥadīce, a resident of the Çukūr Bostān neighborhood in Tophāne.⁶⁰ Ḥadīce stated that she

(London and New York: Routledge, 1988), 1-123; David Powers, *Studies in Qur’ān and Hadīth: The Formation of the Islamic Law of Inheritance* (Berkeley: University of California Press, 1986); idem, “Islamic Inheritance Law: A Socio-Historical Approach,” *Islamic Family Law and the State*, eds. Chibli Mallat and Jane Connors (London: Trotman, 1990), 11-29; Ergene and Berker, “Inheritance and Intergenerational Wealth Transmission,” 25-47.

⁵⁶ BOA, *D.BŞM.MHF*.d. 13007-5 (H. 1208/ 1794).

⁵⁷ The surplus, if any, from the inheritance after its distribution, would be taken by the Public Treasury. An important factor concerning the distribution of the shares to the husband or the wife was that in the absence of other heirs, neither of them could receive the remainder that was above their specified portion. Hence, any amount left over would become the property of the Public Treasury, Barkan, 21.

⁵⁸ BOA, *D.BŞM.MHF*.d. 13007-4 (H.1208/1794).

⁵⁹ The *başbāḳīkulu* was the chief inspector who intervened when tax revenues were delayed and made sure collections were made on time.

⁶⁰ BOA, *D.BŞM.MHF*.d. 13007-2 (H.1208/1794).

had been married to the deceased for the past thirty years and that they did not have any children. She further stated that the Public Treasury's confiscation of his moveable property, income, and the hammam *gedik* had been an error. Having been the deceased's wife for thirty years, she claimed that her husband had made her a beneficiary of his estate in his lifetime, and having no other source of income, Hādīce demanded her lawful share be restored. She asked for the return of 1,750 gurushes that she claimed to be originally hers, as well as her 250 gurushes of dower from his estate. In addition, she demanded a daily wage from the hammam *gedik*, since she had no one to support and sustain her.

A carefully conducted assessment confirmed that Muṣṭafā Agha had registered a will prior to his death.⁶¹ He had assigned el-Ḥāc 'Oṣmān Agha to oversee the distribution of the property he left behind. In the section regarding charity and alms to the poor, Muṣṭafā Agha had endowed 300 gurushes to the Tomtom Mosque, 1,500 gurushes to send a number of Muslims' on pilgrimage to the Hijaz, 250 gurushes for the purchase of five copies of the holy Qur'ān, 500 gurushes to build five public fountains, 150 gurushes for his funerary rites, 100 gurushes to be given to 'Alī Agha, and 100 gurushes to be granted to Ruḳiyye Ḥātūn. The total to be distributed from his estate was 2,900 gurushes.

The testimony of Hādīce indicated that the total value of cash that Muṣṭafā Agha had kept in his household and the hammam was 5,159 gurushes and 429 pieces of gold coins. The real estate and immoveable property that Muṣṭafā Agha had accumulated included *gediks* in Yediḳule, comprising a candlewax *gedik* and a hammam *gedik*. In addition, he co-owned with his wife Hādīce a residence on the shore in Ortaköy, as well as two houses in Tophāne.⁶²

⁶¹ BOA, *D.BŞM.MHF*.d. 13007-3 (H. 1208/ 1794 A.D.).

⁶² BOA, *D.BŞM.MHF*.d. 13007-6, and d. 13007-7 (H. 1208/ 1794 A.D.).

After the assessment of the contents of his will and his confiscated estate, his wife Hādīce was granted her share of the estate, the residence in Ortaköy, as well as a monthly income from the Kılıç 'Alī Pasha hammam *gedik*. She was also given the 1,750 gurushes that belonged to her and the 250 gurushes of dower that was promised to her in her marriage contract. His two relatives, Mehmed Şadık and es-Seyyid Halil Hamid, were granted their share from the estate including the regular collection of rent from the *gediks*. Consequently, the case was resolved with the discharge and re-distribution of the estate's contents by the Public Treasury to the appropriate heirs and legatees mentioned in the original bequest of Muşafā Agha.

These cases concerning the estate of Muşafā Agha shed light on the manner in which individuals took action in the face of unwarranted confiscation of their deserved shares by the Public Treasury. In this instance, Hādīce coordinated the whole operation with the goal of a just re-distribution of her husband's estate to the three entitled heirs. She probably informed the other two relatives, Mehmed Şadık and es-Seyyid Halil Hamid, and coordinated the thread of petitions demanding their claim to their effects in the estate. The Public Treasury probably would never have issued the release of the confiscated property without Hādīce's insistence. The series of documents indicate that she was aware of each property that her husband owned by himself or co-owned with her. With the aid and guidance of witnesses and the two male relatives, she formulated a strategy to counter the seizure by the Public Treasury. Her repossession, therefore, of the material goods in the estate was achieved through an informed and carefully executed plan.

In the previous chapter, I examined the economic factors that structured the institution of marriage and how these affected the balance of power in the spousal relationship. The

strategies that the spouses devised with regard to the safekeeping of their shared property from potential legal heirs were contextualized as elements that indicate a sense of companionate partnership within marriage. The fact that women could own moveable and immoveable property, endow waqfs, grant money and valuable assets to their spouses, and trade their valuables for new resources, were characteristic elements of the Ottoman marriage institution. In light of the quantitative evidence discussed previously, the following section analyzes strategies to acquire and maintain property with respect to marriage in the late-eighteenth and early-nineteenth centuries. Studying the 264 estate records enabled an exploration of the period under consideration—a time of vibrant transitions due to efforts to reform the empire’s military and bureaucratic cadres. It seems that urban Ottoman society generally conformed to a nuclear family lifestyle. However, the laws regarding distribution of inheritance demonstrate the degree of importance given to the notion of extended family in defining the family.

Although the sicils that I examined did not indicate a high percentage of polygyny being practiced in this period, my sample of estate records has shown that polygyny even with an average of 2.8% was still not insignificant. The records indicated that the estate of a man having more than one wife would be distributed evenly among each wife. For instance, the estate of Ḥācī Ḥāfız İsmā‘il Efendi, son of ‘Osmān Agha, a former resident of the Esīr Pāzārī neighborhood, was distributed equally among his two wives, Ḥanīfe and Zeyneb, who both received 2169 gurushes.⁶³ Another man with two wives, Esīrci Ḥācī Yūsuf Agha, son of

⁶³ BOA, *D.BŞM.MHF*.d. 13539-2 (H. 1249/1834 A.D.).

el-Ḥāc Ḥasan, left his wives, Emīne and Esmihan (whose mature son lived in Belgrade), 1199 gurushes individually and each of their dowers in the amount of 151 gurushes.⁶⁴

Under certain circumstances the state would intervene in the assessment of the estates with no legal heirs. After the repayment of their debts, such estates would at times be confiscated by the Public Treasury.⁶⁵ For those who had other legal heirs than their closest kin, the laws of inheritance posed the risk of their spouse's share being devolved to other distant relatives. This aspect of the law explains the myriad of court cases on gifting and appropriation of property between the spouses even when there was no intention of divorce. It is apparent from the sources that gifting immoveable property (*hībe*) was a common practice during this period.⁶⁶ It was a way the married couple could prevent the seizure of their joint property by other legal heirs in the instance of an unexpected death. For example, a number of cases presented in the previous chapter pertain to the wife selling her property to her husband and declaring a certain amount as its value. In return, the husband would obtain sole ownership of that property without compensating the wife. Stating the value of the property given in the form of a gift was a common strategy among spouses allowing the surviving partner to receive an exact amount for the item after the other spouse passed away. This also facilitated selling the estate since its appraisal was already complete.

⁶⁴ BOA, *D.BŞM.MHF*.d. 13411-5 (H. 1242/1827 A.D.).

⁶⁵ See, for example, BOA, *D.BŞM.MHF*.d.13409-8, where a quarter of the estate of Ḥacı Süleymān Efendi, son of Muştafā, was granted to his wife Emetullāh Ḥātūn, daughter of İsmā'īl, and after his debt to 'Ömer Agha was compensated, the Public Treasury confiscated half of the property. There were a total of 32 entries regarding the confiscation of the entire property by the treasury, such as the case of El-Ḥāc Feyzullāh Efendi, son of 'Abdullāh in BOA, *D.BŞM.MHF*.d.13409-8.

⁶⁶ According to the sharī'a, the term *hībe* designated the granting of an object to someone as a donation or favor for their utilization and profit without expectation of compensation, Bilmen, IV, 223.

The case presented in court by Esmā Ḥātūn, daughter of ‘Abdullāh, regarding her gift to her husband demonstrates this point.⁶⁷ A resident of the Seyyid Ferhād neighborhood, Esmā presented her case concerning her husband es-Seyyid Meḥmed Beṣe. In her testimony, Esmā listed a number of articles from their shared household, claiming that she was relinquishing the entitlement to these possessions and that her husband had become their sole owner. In her list, Esmā mentioned twenty-four *çatma* cushions, four regular cushions, three Cypriot-style printed small cotton cushions, three small cushions, four duvets with covers, one mattress, two head pillows, one broadcloth prayer rug, two dresses of Damascus-style print, four cloaks, one sheet, one hammam ware, one small fur, two shirts, four pots with lids, seven pans with lids, one soup dish, three trays, three jugs, one water basin, two pitchers, an ablution basin, in addition to many other household articles that she claimed to have sold to her husband for 150 gurushes. She further stated that she absolved her husband from granting her the deferred portion of her dower in the value of one hundred gurushes by giving him entitlement to it through gift. In the end, she also released him from paying her compensation of 150 gurushes in return for her moveable property. Thus, Esmā gave her husband her household articles and erased his debt of 250 gurushes. Since the couple was still married during the recording of this case, one of the explanations for appearing in court is their intention to protect their property from transfer to other heirs or the Public Treasury upon her death. Also worth emphasizing is that she relinquished her right to the deferred portion of her dower so it would remain her husband’s property if she predeceased him. Perhaps this was Esmā’s way of being kind to him.

⁶⁷ DPM 25, 18/3 (21 July 1795). For other significant examples of husbands’ granting of gifts in the form of *hībe* to their wives, see DPM 34 (1800-01), 33/1, 42/1, 55/4, 64/2, 72/5 and 38/4, and wife’s to her husband see 42/2 from the same ledger.

Numerous important questions arose when I examined the estate records of the late-eighteenth century and the manner in which gender difference influenced the execution of inheritance law. According to the sharī‘a, women received half the amount received by men from the estate of the deceased. On the other hand, female relatives constituted seven of the ten blood-related legal heirs in the first degree. Under the rules of the sharī‘a, wives had certain assured privileges regarding their husbands’ estate, which allowed them a sense of protection when their marriage ended due to their spouses’ deaths. The husband was responsible for his wife’s enshrouding and funerary expenses regardless of her wealth. A woman’s deferred dower would also be her guaranteed entitlement from the estate of her husband. If a couple’s marriage ended with revocable repudiation, the spouses could still inherit from each other in the event of either’s death. If a female were the sole offspring of the deceased, she would receive half of the estate. If more than one daughter survived the death of a parent, they would each receive one-thirds of the shares. If there were male siblings, the property would be divided by a two-to-one ratio, with the male offspring receiving twice the amount given to the female offspring. This information allows for conjecture about the accumulation of women’s assets and possessions through the institution of marriage.

The probate inventories also included the rights of unborn children who could receive a share of the bequest without the need for their acceptance of it. People could bequeath one third of their estates to their unborn offspring provided that the child was conceived before the bequest was made. In the estate records I examined, there was only one entry concerning a pregnant wife whose husband had passed away before the birth of their child. A resident in

the ‘Arabacılar barracks, Sā’īl Kürd İbrāhīm, veled-i Meḥmed⁶⁸, had died on the street in H. 1244 (1828 A.D.).⁶⁹ Surviving him was his then pregnant wife. The deceased’s estate was worth 485.5 gurushes before his debts were distributed. His wife, whose name was not registered in the document, received her due deferred dower in the amount of 60 gurushes and the unborn offspring was granted 75 gurushes. Hence, the unborn child’s share was 15.4 % of the entire estate of Kürd İbrāhīm.

The numerous cases regarding wills in the sicils indicate that married couples, and single or widowed individuals, recorded their wills as precautionary measures in the event of their unexpected death. The extant records indicate that the marital union provided a sense of security since couples could secure their property through carefully constructed allocation strategies to keep the family’s shared fortune. The case of Ḥadīce Ḥātūn demonstrates how married couples could ensure the formalization of their bequests in court.⁷⁰ Since one’s estate was divided automatically according to the guidelines of the sharī‘a, the registration of wills was a strategic act of autonomy. The court record examined below identifies how Ḥadīce controlled the way her estate would be distributed after her death.

On the morning of September 4, 1783, Ḥadīce and her husband, Ḥaffāf Süleymān, a boot-maker, hosted the court’s head clerk, Mevlānā es-Seyyid Muṣṭafā Sa‘dullāh Efendi, son of es-Seyyid el-Ḥāc Meḥmed Efendi, in their house located in the Arabacı Bāyezīd neighborhood. In the testimony recorded in her first person voice, Ḥadīce mentioned that she

⁶⁸ The title Sā’īl is used for someone who asks questions, enquires, interrogates. It is also used to denote a beggar. Given the fact that Kürd İbrāhīm was staying in the barracks and he died on the street, it is feasible that he was a beggar. It should also be noted that Kurdish ethnicity was distinguished in the same manner as a *ḡimmī* (veled-i).

⁶⁹ BOA, *D.BŞM.MHF*.d.13441-2 (H. 1242/1828 A.D.).

⁷⁰ *DPM* 2, 24/2 (4 September 1783).

absolved her husband, Süleymān Agha, from the obligation to pay the deferred dower of twenty-five gurushes. Ḥadīce further stated that two months prior to the recording of this case, she had given her husband a pair of golden belts worth forty gurushes. Perhaps by registering the values of her deferred dower and previous gifts, Ḥadīce was trying to secure the property from being considered part of the estate out of which he would receive his spousal share following her death. According to the sharī'a, as her husband, his share of the estate would be half of the entire sum if Ḥadīce did not have any children, and a quarter if she did. All the moveable and immoveable property mentioned in the record would be subtracted from Ḥadīce's estate, since it would be distributed among her legal heirs. Ḥadīce and her husband's action was possibly a strategy to avoid other heirs from getting a part of their property. Perhaps her husband persuaded or pressured Ḥadīce to take this action. Nevertheless, Ḥadīce's presence in court, and display of initiative in terms of her estate communicate her central presence in the recording of this case.

By appointing her husband as the executor, Ḥadīce commissioned him to take charge of all her possessions in the event of her death. In the record, she commanded her husband to oversee the distribution of the one-third of her estate among the couple's kin. Ḥadīce asked for fifteen gurushes to be given to the needy so her worldly sins would be dismissed. She also requested that her husband spend fifteen gurushes to buy two sandstone grits for her grave, one for the head and the other for the foot. Finally, with another fifteen gurushes, Ḥadīce demanded that food be distributed to the poor. She stated that if any amount remained from her estate, her husband should grant it as alms to the charity of his choice. In her final recorded words, Ḥadīce specified that since she and Süleymān Agha did not have any children, she chose to distribute some of her belongings to the poor and needy, and had

appointed her husband as the executor of her will. This was a role that her husband gladly accepted.

Even if it is not clear from the record whether this couple had been married for a long time, the fact that Ḥadīce was registering her will makes it highly probable that she was not in the early stages of marriage. Perhaps she had an infirmity and perhaps she was in the final stages of her old age. The fact that the record was registered in the couple's house instead of the court could have been due to Ḥadīce's condition and inability to commute. Ḥadīce does not seem to have left behind any immovable property. The total of her estate mentioned in the record was worth forty-five gurushes. The fact that her husband was a boot-maker and her dower was twenty-five gurushes explains that Ḥadīce did not come from a family of great economic means, nor did she marry into wealth. The household wares and clothing listed in her will are not customarily seen in estate inventories. One might argue that she chose to mention only a portion of her estate in her bequest, leaving the rest to be allocated by the state and the court. Nevertheless, her effort to provide her husband with some level of security shows that she wanted to control her own legal transactions as well as her husband's future.

The sharī'a did not impose specific limitations on the composition of women's wills. Women were regarded in the same way as men; however, since their economic conditions depended largely on their marital status, they might have had more difficulty registering their bequests due to the required court fees. Nevertheless, this did not seem to deter women from taking action with regard to their bequests. For instance, during 1799-1800, a total of

seven women and seven men registered their wills in the Dāvud Pasha court.⁷¹ This number reflects the seriousness with which women, just as men, took the issues related to the security, distribution, and disposition of their property. The case of ‘Āyşe exemplifies how effectively women functioned within the system when writing their wills and assigning executors. ‘Āyşe left most of her possessions to her husband, and appointed her mother-in-law as the executor of her estate.

On August 31, 1795, ‘Āyşe Zihni, daughter of ‘Abdullāh, came to the Dāvud Pasha court to register a statement regarding her will.⁷² ‘Āyşe’s testimony in court mainly concerned her husband, es-Seyyid Süleymān Agha, son of el-Ḥāc Meḥmed, and her mother-in-law, Fāṭma, daughter of el-Ḥāc ‘Abdullāh. In her account regarding re-structuring the ownership rights among the couple she said, “I reside with my husband in a house located in the aforementioned neighborhood.” She went on to assert that she would be granting to him all her moveable property located in their co-owned household, namely, a belt with diamonds, a pair of golden earrings with encrusted emeralds, a silver candelabrum, a silver thread (*kilābdān*) with toothpick, six cushions, one mattress, three felt broadcloths, fourteen pillows, four pillows and mattresses, six duvets and covers, one bedding, two head pillows, one felt prayer rug, thirteen coffee cups with silver holders, one cheval glass, one furnace, one fur, fifty-two dresses, one squirrel fur, one new dress made of broadcloth, one embroidered cloth, one small dresser, one small embroidered pillow, five slippers, one copper tray, and one wooden tray. Apart from this property, she stated that all the other furniture and articles in the house now belonged solely to her husband. In addition, she absolved her

⁷¹ DPM 34 (1799-1800).

⁷² DPM 25, 56/4 (31 August 1795).

husband's obligation to pay her the 150 gurushes of her delayed dower in the amount of 300 gurushes, meaning he had already repaid half of the contracted sum.

‘Āyşe reserved the rest of her estate for the funerary preparations of enshrouding and burial, and for charity.⁷³ She left 100 gurushes as alms to the poor, and she demanded that, with the last portion of the estate, two Qur’ans be purchased—for twenty gurushes each—for donation to men of religion. She further specified that should funds remain, they be distributed among the poor and needy as alms. An interesting aspect of the will is that ‘Āyşe assigned her mother-in-law, Fāṭma Ḥātūn, to be her inheritance executor instead of her husband. Given the amount of dower in question and perhaps even the *seyyid* title of her husband, it is apparent that she was married into a family of high means and social prestige. It is not clear however, why she chose her husband's mother instead of her husband to be the executor of her estate.

An example illustrating that husbands were also concerned with the future wellbeing of their wives after their passing is the detailed and interesting case of el-Ḥāc Ḥalīl Agha. The case he presented in court regarding his wife, Zeliḥa, daughter of Ebūbekir, strategically protected their shared estate from being divided among other legal heirs and assured that either surviving spouse acquired full entitlement to the estate following the other's death. The chief scribe of the court, [?] Mevlānā Ḥāfız ‘Osmān Efendi, was dispatched to the house of Serāsercibaşı (chief of the sultan's kaftan weavers) el-Ḥāc Ḥalīl Agha in the vicinity of the Çırağcı Ḥasan neighborhood to record the case regarding the settlement between himself and

⁷³ Responsibility for the burial expenses belonged to the husband, even if the wife could afford the cost. Thus, we can consider her allocation of a sum for burial expenses as another “gift” to her husband, see Bilmen V, 214.

his wife.⁷⁴ Given Ḥalīl Agha's profession, we can assume that he had close ties with other palace officials. His preceding title, '*el-ḥāc*', establishes that he had completed his pilgrimage to Mecca. These factors made him a prominent figure in society. In his testimony, Ḥalīl Agha indicated in the presence of Muslim witnesses that he had previously granted his wife—by way of an advanced dower—some household articles including three cushions, three red felt broadcloths, ten couch cushions, five head pillows and two duvets with covers, one water jug for everyday use, two pots with lids, one pot, one basin with pitcher, a bowl, a large brass tray, one copper tray, and a cauldron. He then stated that he no longer had any entitlement to this property, claiming Zeliḥa as its sole owner. The settlement was recorded as such on December 21, 1783. This case was followed by another concerning the estate of el-Ḥāc Ḥalīl Agha. The records of both cases cited the presence of male witnesses; Zeliḥa was not mentioned as present (even though she may have been in attendance). Given the prominence of Zeliḥa's husband, it is possible that her advanced dower did not solely consist of the household items mentioned above. She may have received a certain amount of money at the time of their marriage contract. Perhaps the couple was newly married, and they had decided to record the remainder of Zeliḥa's dower. It is possible that Zeliḥa was not Ḥalīl Agha's only wife and she had asked him to register what was rightfully hers to secure her property from the threat of his other wives' claims in the event of his death. Although she could have been the instigator who summoned this court, Zeliḥa's presence in the registration process was ultimately muted because her husband took care of the matter for her. Naturally, the obverse may also have been true: given that Ḥalīl Agha seemed to have the decision-making authority in their marriage, he might have

⁷⁴ DPM 2, 52/3 (21 December 1783).

given her only the aforementioned materials and this could have been her sole dower.

Unfortunately, it is not possible to determine from the record which of these situations applied to Zelîhâ's marriage.⁷⁵

The record regarding the bequest of el-Hâc Ḥalîl Agha was also registered in the testator's own house where Ḥāfız 'Osmân Efendi, the court's chief scribe, was overseeing the matter.⁷⁶ In his statement, Ḥalîl Agha declared the steward of seamen, es-Seyyid 'Alî, son of eş-Şeyḥ 'Osmân Efendi, as his inheritance executor. The will carefully detailed Ḥalîl Agha's debts to be paid, loans to be collected from a variety of individuals, as well as the alms he wished to be distributed in his name after his death. Ḥalîl Agha requested that one hundred gurushes be reserved from his estate for his enshrouding and burial expenses. The testator then stated that his wife, Zelîhâ, should receive her deferred dower in the amount of fifty-five gurushes.⁷⁷

In the second part of his bequest, Ḥalîl Agha listed the individuals who were to receive their payments from his estate so that his wife would not have to cope with these transactions. He specified that Viko *zimmî*, the grocer in the Koca Muştafâ Pasha district, was to receive twenty-five gurushes and another grocer located across from the gate of the Koca Muştafâ Pasha Mosque was to receive forty gurushes as compensation for foodstuffs. Ḥalîl Beşe, the butcher, was to receive two gurushes and two paras. Apart from these, the silver-thread (*kılâbdân*) maker Bukus *zimmî*, whose shop was located in Çârşubâşı, was to

⁷⁵ Faroqhi has presented the problem of a husband representing his wife as her proxy in court, questioning the lack of clarity about whether the husband was considered to be the natural proxy of his wife. Faroqhi also asked important questions about whether the witnesses testifying to the representation knew the woman in question: Suraiya Faroqhi, *Stories of Ottoman Men and Women*, 186. According to Bilmen, a husband was not automatically the assumed proxy of a woman, unless otherwise suggested by her: Bilmen, VI, 311-13.

⁷⁶ DPM 2, 52/4 (21 December 1783).

⁷⁷ Ibid.

receive 155 gurushes as payment for the silver-threads. Ḥalīl Agha requested that his fellow tradesman, el-Ḥāc Muṣṭafā, receive seventy-two gurushes in repayment of his debt and another man (whose name was not legible) receive fifty-five gurushes and thirty paras as compensation for his debt. Ḥalīl Agha requested that eighty gurushes be given to the son of the “ḥanım” who made silver-threads in the same bazaar. The testator’s other creditor, his executor, es-Seyyid ‘Alī Agha, was to receive twenty-two gurushes as payment of Ḥalīl Agha’s debt. The gardener *zimmī* was to receive fifty of the 155 gurushes debt, and the silver-thread maker *zimmī*, the son of Sakizani, was to be granted fifty gurushes. The wife of Muṣṭafā Agha, the other Zelīḥa Ḥātūn, was to receive forty gurushes for the payment of Ḥalīl’s debt. The aforementioned costs added up to 673 gurushes and thirty-two paras, which would be automatically deducted from his inheritance to pay for his necessary burial procedures and his debts to a variety of individuals. Ḥalīl Agha then listed what should be done with the one-third of his estate. He asked that forty gurushes be distributed among the poor for their prayers and ten gurushes for the pardon of his sins. He also demanded that a reciter deliver the entire Qur’an from memory five times and be paid three gurushes for each recitation. Ḥalīl Agha commanded his administrator, ‘Alī Agha, to distribute among the needy whatever remained from his estate. He also stated that his wife, Zelīḥa Ḥātūn, and the son of the granddaughter of his maternal uncle, ‘Āyşe, daughter of Meḥmed, share the remainder of the one-third among themselves. The will was registered in the presence of both of his heirs, his administrator, and the chief scribe.

Clearly, married couples often relied on each other—by appointing one another as executor—to ensure the proper apportionment of their bequests. Meḥmed Emīn Agha, who was a resident of the Uzun Yusūf neighborhood, registered in court his case regarding his

wife, Ḥadīce.⁷⁸ The first-person statement of Meḥmed Emīn Agha was recorded by the scribe. He said, “I appoint my wife, Ḥadīce Ḥātūn, as the executor of my entire estate after my death takes place by God’s command.” He added, “Ḥadīce Ḥātūn should be the sole person in charge of my legacy and she should handle all the dealings pertaining to it.”

Meḥmed Emīn Agha first asked that sixty gurushes out of his inheritance be put aside for the washing and arrangement of his body for burial. With the one-thirds of his estate, thirty gurushes were to be distributed as alms among needy Muslims and seventeen gurushes given for their prayers for his salvation. In addition, Meḥmed Emīn Agha requested that thirty gurushes be used to purchase a valuable copy of the Qur’an to be donated to a worthy individual. Meḥmed Emīn Agha demanded that a water fountain be built in an appropriate place with one hundred gurushes and that ten gurushes be used to purchase and distribute food and sweets among the poor. He stated that his wife, Ḥadīce, should spend whatever remained from his estate on the charity of her choice. And he registered in the record that, after the funeral expenses were deducted, one quarter of the entire estate should be taken by his wife, since he had no other legal heirs.⁷⁹ After appointing Ḥadīce as the executor of his inheritance, he assigned es-Seyyid Meḥmed, son of Muṣṭafā, as the overseer of its rightful distribution. This case, recorded on April 10, 1800, illustrates how heavily a husband relied on his wife to handle his legacy. When he chose Ḥadīce to be the executor of his estate, Meḥmed Emīn Agha must have been certain that she was well equipped to select suitable candidates to receive his help. He also must have been confident in her knowledge of the

⁷⁸ *DPM* 34, 22/3 (10 April 1800).

⁷⁹ A single individual could be the receiver of the entire will. For instance, if a man did not have any other heirs he could bequeath the total of his estate to his wife and vice versa. However when a woman or man bequeathed half of their estate to their spouse, the other half would still be in the possession and share of the one who is the sole heir. If a woman who had no other heirs but her husband bequeathed half of her estate to a stranger and died, that half would be granted to that beneficiary, one-third to her husband, and one sixths to the Public Treasury, see Bilmen, V, 127-128.

law. Mehmed Emīn Agha not only granted his worldly property to his wife; he entrusted her with his reputation, confident that her fair judgment would guarantee his good name.

Cases that involved married couples' imposition of stipulations on each other as a condition of their bequest occurred rarely in court. A woman's right to ownership, to trade valuables, and her freedom to allocate her possessions as she desired fundamentally determined her autonomy. Remarriage was another means through which women could assert autonomy over their futures. In Ottoman society, remarriage of both widows and widowers seem to be received well. To the degree one could tell from the court records, which do not reveal much about emotions, the tolerance with which the spouses accepted one another's previous marriages demonstrates that the concept of remarriage was not frowned on, nor was it immediately associated with one's honor or disrepute.⁸⁰ The case regarding the inheritance of Zeyneb Hātūn, daughter of Muṣṭafā, illustrates how women conducted their lives when they were married more than once.⁸¹

A resident of the Bayezīd-i Cedīd neighborhood, Zeyneb Hātūn had passed away leaving behind two immediate heirs. The first was her son, 'Abdül'azīz Efendi, from Zeyneb's marriage to Aḥmed. Zeyneb's second heir was her daughter, 'Āyşe Hātūn, born from her previous marriage to Hüseyn. The document stated that the contents of Zeyneb Hātūn's estate were to be divided proportionately as proscribed by the sharī'a. Her son represented his half-sister as her agent in court. The witnesses, Feyzullāh Efendi and Aḥmed Beşe, testified to his appropriateness as an agent. 'Abdül'azīz said, "My mother, Zeyneb

⁸⁰ A discussion of the situation in Western Europe and Greece in the early-modern period explains the relationship between a society's perception of honor and marriage and how these perceptions created certain sensitivities that impacted inheritance strategies, in *Shackles of Modernity*, 29.

⁸¹ DPM 47, 46/5 (26 May 1806).

Ḥātūn, had in her possession during her lifetime a house situated on a plot of land of 140 square-yards in the Öksüzce neighborhood near Sarıkız in İslāmbol (İstanbul). The land is surrounded on two sides by the house and garden of ‘Abd’ül-rahmān Efendi, a notable judge from Anatolia, by Emīne Ḥātūn’s house, and a public road on the two other sides. When she died, my sister and I were the only heirs to the house and land that our mother left to us. However, we did not have a formal title deed or document certifying our proprietorship.” ‘Abdül‘azīz Efendi then requested a formal investigation of the matter and recording of their ownership of their mother’s estate. This was done to record the estate, make their claim known publicly, and prevent seizure of the entire estate by the Public Treasury.

In the following entry, the same ‘Abdül‘azīz, who had probably acquired a positive outcome from the previous lawsuit, claimed that he owned two parts and his sister one part of the land and house that was their mother’s legacy. The two of them decided to sell this property to their mother’s neighbor, ‘Abd’ül-rahmān Efendi. They obtained a total of thirty-six gurushes from the sale of the property and shared it proportionately. The suit was settled to the satisfaction of both sides. The two lawsuits were significant in terms of the relationship between Zeyneb’s children from her two marriages. The children were on amicable terms with each other and their presence in court indicates that they were both of legal age. Hence, it seems that Zeyneb did not die at an early age. That ‘Abdül‘azīz Efendi represented his sister, ‘Āyşe, demonstrates their trust in each other. Since Zeyneb Ḥātūn did not have any other heirs, it is possible that both of her husbands predeceased her. That is probably why she opted to remarry after the death of her first husband Ḥüseyn, keeping ‘Āyşe, the daughter from her first marriage with her in the household of her second husband Ahmed. Consequently, this could have resulted in ‘Abdül‘azīz and ‘Āyşe’s growing up

together in the same household, which would explain their close bond. Although from separate marriages, the children of Zeyneb Hātūn had the same amount of shares from her estate as would siblings conceived by the same parents. Because ‘Abdül‘azīz was a male offspring he received two parts, while ‘Āyşe received one part of their mother’s inheritance.

The fact that remarriage and its consummation was required for a previously divorced couple to marry again may have reinforced the positive image that remarriage enjoyed in Ottoman culture to a certain extent. Clearly remarriage created issues regarding notions of stepmothers, stepfathers, and siblings, especially in inheritance related instances, but the court records do not expose sufficient negative sentiment to be able to reach a conclusion about their impact on the family. As explained in the second chapter, if a man decided to divorce his wife irrevocably and later wished to remarry her, he would have to tolerate her marriage to another man and the consummation of that marriage before he could remarry her. This was the regulation according to the sharī‘a to deter men from hastily divorcing their wives. But, it could also have been the reason for the frequent appearance and likely tolerance of remarriage.

Cases regarding inheritance deeds and wills did not always take place between concurring parties. The following is an example of how a family dispute triggered by the death of the father resulted in mutual agreement. In December 1783, Hātīp-zāde Mevlānā Mehmed Şālih Efendi, a judiciary official of the Dāvud Pasha court, was dispatched to the house of İbrāhim Çavuş Agha located in the Uzun Yusūf neighborhood to oversee an inheritance settlement among the members of a family.⁸² The deceased was Hāfiz Aḥmed Efendi, a local of the Çivi-zāde neighborhood. Hāfiz Aḥmed had passed away while he was

⁸² DPM 2, 54/6 (1782).

traveling to İzmir. Hāfız Aḥmed's wife, Şerīfe Rābi'a, member of an ulema family in Istanbul and their three children were his only survivors. Şerīfe Rābi'a, her son, Molla Aḥmed, and her two daughters, Şerīfe Havvā and Şerīfe 'Āyşe, awaited the outcome of the case they had presented in court with anticipation.

Hāfız Aḥmed's extensive estate consisted of thirty-two parts. Of these, Şerīfe Rābi'a received four, her son Molla Aḥmed received fourteen, and the two sisters received seven parts each. Although the distribution of the portions was straightforward, Şerīfe Havvā, the couple's older daughter, brought a lawsuit against her mother and sister regarding her share. Şerīfe Havvā was living in the house of the deceased at the time the case was recorded. Şerīfe Rābi'a and Şerīfe 'Āyşe were not present and they were represented by Şerīfe 'Āyşe's husband, Şerīf Meḥmed Agha. In her testimony, Şerīfe Havvā stated that after the death of her father, she asked her mother and sister to allow her to have the share from his estate that was a plot of land with two adjacent houses. She said, "When they declined my request, we had a heated dispute. After this, we decided to resolve matters through the sharī'a." The women of Hāfız Aḥmed's family finally came to a resolution when Şerīfe Rābi'a and Şerīfe 'Āyşe offered to buy the shares of Şerīfe Havvā for 284 gurushes.

The estate records and court cases regarding the registration of wills presented in this chapter demonstrate the methods and strategies for property transmission employed by both men and women in late-eighteenth-century Istanbul. As in marriage and divorce suits, the dower emerged as a determinant in the settlement of inheritance-related cases. The significance of the dower in estate records and wills of individuals from different social and occupational backgrounds suggests the central role that marriage occupied in their lives. Most importantly, women appear as active figures who took control of their own bequests

and inheritance shares, managing their possessions and transactions assertively. Women were also participating partners in strategies devised by married couples to evade inheritance regulations and protect the unity of their property. Their agency was validated as well by the roles entrusted to them, particularly when their husbands and other kin requested their assistance as executors of wills. The dower values analyzed in court and estate records increased more rapidly toward the 1830s. Although this increase was affected by changing economic conditions such as inflation rates, it could also mean that women had a more controlling presence within family life and matrimony. The sources reveal that women were knowledgeable about innovations such as the *esāme* and *gedik* and that they took part in efforts to shape and manipulate their legacies. In this period, through the benefits of ownership of personal property and a separate economy within marriage, women appear as autonomous figures able to control and configure their own paths in life. Hence, the experiences of the spouses in navigating their property within marriage suggests that the predominant marriage pattern observed in the segment of the population that used the court was companionate.

CONCLUSION

The matrimonial union is one of the fundamental institutions defining a society's composition. I embarked on this study to delineate the formation and the dissolution of marriage in late-eighteenth-century Ottoman Istanbul in order to essentially understand the characteristics that made up the family in this particular society. Elucidating the social conceptions, Islamic legal regulations, customary practices, and patterns that comprised the marital bond in the eighty-five years between 1755-1840, my observations have yielded a much more companionate relationship between the spouses than previously assumed. Given that the only monograph on family life and household structure in the capital city of the empire was of the late-nineteenth and early-twentieth century, my findings have a significant bearing on the structure of Ottoman family, specifically with regard to women.

The diverse sources comprising court records, treatises on conduct, fetva collections, and estate inventories allowed for a comprehensive inquiry into the nature of the marital union, especially with respect to women's agency and autonomy, towards an understanding of the marriage patterns in this society. These texts alone may not reflect actual practices in their entirety; they are, however, the products of cultural notions and performances relating to marriage and its actual manifestations in society.

My initial approach was to establish a systematized framework through the use of sharī'a court records in order to obtain statistical information regarding the part of society that made use of the court. Illustrating the court's involvement in the lives of husbands and wives was central to comprehending how the basic normative regulations of the sharī'a influenced and shaped the relationship of the conjugal couple. This mediatory role of the

court also indicated the manner in which spouses navigated their marital concerns within the framework of the *sharīʿa*, and devised strategies to maintain the best possible outcome.

Although women's agency in court is an identified phenomenon, I was surprised by the level of assertion and self-direction with which they maneuvered within the predetermined normative stipulations.

In my quantitative analysis, I studied the records of three courts in *intra muros* Istanbul, namely, the Dāvud Pasha, Aḥī Çelebi and İstanbul Bāb courts. An unanticipated outcome was the rarity of marriage contracts. Clearly, despite some efforts to promote the acquiring of marriage permits on a local level, the state did not impose the registration of marriage in this period. Similarly, the registration of divorce—an aspect of marriage that was solely the unilateral right of men—was not enforced. The scarcity of marriage contracts was not paralleled, however, in terms of divorce registration in court primarily by women, of *ḥulʿ* and of *ṭalāḳ*, when women felt the need to have their rights protected. An unprecedented finding was the noticeable increase in the registration of *ṭalāḳ* cases by women. Thus, this significant rise specifically indicated women's regard of the court as a protective mechanism in which they could ascertain their benefits after divorce. Furthermore, since the registry of repudiation was not compulsory, the voluntary attendance of women as claimants registering their repudiation demonstrated their level of awareness of the court's function and their resolute agency. This kind of agency gave women the initiative to control their circumstances within the marital union and also in the public realm.

My analysis of the application of active negotiation strategies, in particular by women, vis-à-vis matrimonial matters such as alimony and maintenance fees, dower values, property exchange between spouses, and appointment of estate administrators enabled me to

revise prevailing perceptions regarding women's roles in marriage. The husbands' recognition and reinforcement of their wives' agency, especially concerning financial arrangements among the couple, was a finding that changes the way Ottoman family was generally perceived. Hence, I explored certain economic and financial innovations, such as *esāme* and *gedik*, established in this period, in order to determine women's knowledge of and active participation in these advances.

A proper analysis of marriage and divorce could not be immune to the practices of property allocation among spouses. The exploration of a sample of estate inventories and bequests expanded my interpretation of couple's management of their property in the face of the changing circumstances. Accordingly, I argued that in the late-eighteenth century married couples adhered to certain maneuvers in order to circumvent the sharī'a's compulsory rules of inheritance in order to protect the unity of their property. Women's initiative and control were also validated by the roles entrusted to them, particularly when they were appointed executors of wills by their husbands and other kin. The spouses' mutual recognition of roles lead to partnership in taking advantage of or disposing of resources that were not necessarily jointly owned. Many other documents revealed the mobility and agency of women in terms of defending and protecting their legal and financial privileges. For instance, a particularly surprising find was the marginal notes in estate inventories that included women's first-person account of their marriage contracts. These marginal notes were a reiteration of wives' intention to secure the receipt of their dower's deferred portion from their deceased husbands' estates. Even if Islamic inheritance laws guaranteed the allotment of the wife's dower from the estate of the deceased husband, this type of proclamation by women indicated a willpower to safeguard their deserved share.

One of the most significant and unexpected findings of my research concerned the detection of a more elaborate and specialized court system during this period in Istanbul. My assessment of marital disputes recorded in all three courts revealed that the number of marital and family related suits in the Dāvud Pasha court was significantly higher than the other courts. The Dāvud Pasha court seemed to predominantly concentrate on matrimonial disputes and registrations during the eighty-five years under scrutiny. Such explanations as there being a kadi more agreeable to marital disputes in this court were discarded by the fact that the length of the surveyed period exceeded the duration of appointment of kadis. Given that litigants were unrestricted in their choice of court enabled the attendance of individuals from various neighborhoods of the city to this court in order to register their divorce settlements and other marriage related conflicts. My examination of the three courts' records showed that the plaintiffs who attended the Dāvud Pasha court had lower deferred dower values in comparison to those indicated by the other two courts' records. The data in this court specified, as well, that women with lower dower values were more adamant about the registration of their divorce.

Contemporary male observers wrote frequently, and rather disapprovingly, about women's social activity and commented that this kind of visibility negatively impacted the established gender order within society. The concerns of historians such as Cābī and Şem' dānizāde, among others, seem to have resonated among different circles in society, even when their approaches differed. What remains as a challenge, though, is deciphering the extent to which these treatises mirrored the actual state of marriage and how much their authors' ideological representation of the subject matter was projected onto the matrimonial union itself.

My inquiry into the worlds of married and divorced spouses in late-eighteenth-century Istanbul revealed that matrimony was a continuously negotiated aspect in people's lives. Perhaps suitability of the marrying parties, *kufiww*, was an important factor in the choice of partner merely for the protection of the individual from certain adverse effects of this negotiation process. It seems that the spouses were considered to be each other's peer as long as the husband was able to provide for his wife and the general necessities of their household. Hence, if the husband was capable of fulfilling this requirement, he would be considered a peer even of a woman of greater wealth. The several records pertaining to property allocation indicated that women's higher economic status within marriage was not considered an aspect contradicting the notion of *kufiww*. Consequently, the concept of *kufiww* was deemed more important with respect to the non-material compatibility of the marrying parties.

Having stated the general attitude towards the compatibility of the spouses, it is important to remark on the recognition of a separate economy within marriage as it was practiced in Ottoman Istanbul. My examination of both the sicils and the estate records illustrate that marriage was a highly monetized institution that was the result of the spouses' rights to own property separately; therefore, several cases of property sale and exchange among the conjugal pair point out the widespread practice of this understanding.

This dissertation analyzes the unexamined history of marriage and divorce patterns and explains the predicaments, sensitivities, and mentalities pertaining to Ottoman family life in the segment of society that settled disputes in court. The sharī'a court had a participatory and significant role in the resolution of marital conflicts in Ottoman society. The court of the kadi offered an equal hearing for each subject including men and women, Muslims and non-

Muslims, locals and outsiders, and individuals of different social status. This study focuses on understanding what was conditioned and internalized by those participating actors who anticipated a chance at improving their circumstances in and outside of marriage. Hence, during the period between 1755 and 1840, I suggest that the increasing public proclamations of ordinary men and women with respect to their private relationship should be recognized as preliminary steps to the required formalization of the conjugal bond. Further research and systematic examinations of other courts' records and a wider sample of estate inventories may reveal that the period analyzed was the beginning of society-enforced attempts to formalize matrimony. The methodical exploration of a larger sample of court records would also give clues with respect to the proportion of the population that attended the court. The assessment of such data would certainly benefit our knowledge of the late eighteenth century and further our understanding of the Ottoman family.

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ABBREVIATIONS

AÜDTCFD	Ankara Üniversitesi Dil Tarih Coğrafya Fakültesi Dergisi
AÜİFD	Ankara Üniversitesi İlahiyat Fakültesi Dergisi
B	Belleten (Ankara)
Bel	Belgeler (Ankara)
BTDD	Belgelerle Türk Tarihi Dergisi
DBİA	Dünden Bugüne İstanbul Ansiklopedisi
El2	Encyclopedia of Islam, 2nd edition (Leiden)
EWIC	Encyclopedia of Women & Islamic Cultures
İA	İslam Ansiklopedisi (İstanbul, 1950-1988)
IJMES	International Journal of Middle Eastern Studies
IJTS	International Journal of Turkish Studies
IJWS	International Journal of Women's Studies
ILS	Islamic Law and Society
İÜEFTD	İstanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi
JAAS	Journal of Asian and African Studies
JEH	The Journal of Economic History
JESHO	Journal of Economic and Social History of the Orient
JFH	Journal of Family History
JOH	Journal of Ottoman History
JTS	Journal of Turkish Studies
MESAB	Middle Eastern Studies Association Bulletin
MTM	Milli Tettebbu'lar Mecmuası
OA	Osmanlı Araştırmaları
OTAM	Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi
SI	Studia Islamica
TBD	Tarih Belgeleri Dergisi
TD	Tarih Dergisi
TED	Tarih Enstitüsü Dergisi
TT	Tarih ve Toplum
TTYT	Tarih ve Toplum: Yeni Yaklaşımlar
TB	Toplum ve Bilim
TALİD	Türkiye Araştırmaları Literatür Dergisi (Türk Hukuk Tarihi, 2005)
TDVİA	Türkiye Diyanet Vakfı İslam Ansiklopedisi (İstanbul, 1988-)
TDA	Türk Dünyası Araştırmaları
THTA	Türk Hukuk Tarihi Araştırmaları
TSAB	Turkish Studies Association Bulletin
VD	Vakıflar Dergisi

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- Ali Emiri Tasnifi, Selim III, Mustafa IV, Mahmud II
- C: Cevdet Tasnifi: (ADL) Adliye, (BLD) Belediye, (DH) Dahiliye, (EUM) Emniyet-i Umumiyye, (İD) Muhaberat-ı Umumiye İdaresi, (MKT) Mektubi Kalemî, (SAİD) Sicill-i Ahval İdare-i Umumiyyesi, (VRK) Varak, (Z) Zaptiye
- İE: İbn ul-Emin Tasnifi, (ADL) Adliye
- Y: Yıldız: (PRK) Perakende, (MŞ) Meşihat Dairesi Maruzatı
- A: Sadaret Defterleri; (DVN) Divân Kalemî Evrakı, (MKT) Mektubi Kalemî Evrakı

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